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BEYOND COLOURS: Assets and Liabilities of 'Post-Orange' Ukraine

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Beyond Colours:
Assets and Liabilities of 'Post-Orange' Ukraine

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Contents

Executive Summary	7
Introduction	13
1. Slow change – Ukraine’s fate?	16
1.1. Revolution as return to an evolutionary path	17
1.2. The enduring effects of Ukraine’s historical legacy	25
1.3. The gradual emergence of a market economy	28
2. Pluralism – a basis for the future	31
2.1. Pluralism in politics by default	32
2.2. Pluralism in business: the basis for political competition	34
2.3. Regional diversity	38
2.4. Pluralism in the information space	41
3. The low degree of consensus	44
3.1. The lack of agreement on the rules of the game	45
3.2. Low quality political and business elites	51
3.3. No consensus on reforms	58
3.4. Elites and society – never the twain shall meet?	63
4. A lack of strategic vision	68
4.1. The growing security challenges	69
4.2. European integration – yes, but...	71
4.3. The perennial question – what kind of relations with Russia?	76

5. Prognoses	81
5.1. Who will govern Ukraine: back to presidential rule?	84
5.2. Big political business groups – winners and losers	87
5.3. Towards the ‘rule of law’ or still ‘playing with the rules’?	89
5.4. Freedoms	91
5.5. Prospects for national integrity and consensus	92
5.6. Coping with economic crisis	93
5.7. Foreign policy	96

Executive Summary

This report aims to present a portrait of Ukraine following the fifth anniversary of the Orange Revolution and the 2010 presidential elections. The authors of this report see Ukraine as a glass, which is half full and half empty, i.e. there are real concerns about Ukraine's future trajectory allied to the fact that the Orange Revolution has produced a legacy of which the benefits are clear to see. For example, Ukraine is a well-rooted electoral democracy with the longest list of free and fair elections among the CIS countries, in contrast to many (semi-) authoritarian countries in the region. Yet Ukraine is still far from being a smoothly functioning constitutional democracy.

Ukraine's transformation since its independence can be characterised as a slow and gradual change or, more succinctly, evolutionary. The years following the Orange Revolution contrast with the preceding years, during which the evolution was interrupted. In 1999 President Kuchma was re-elected for a second term as a result of the 'no-win' situation (the choice between the Communist leader Symonenko and Kuchma in the run-off). Furthermore, this re-election resulted in the capture of the state by oligarchic clans with the President on top and led to the de-facto elimination of the separation of powers. Up until these events, Ukrainians had the government they chose, in the sense that both Leonid Kravchuk and Leonid Kuchma (the first time round)

were elected in free and, more or less, fair elections, from a plurality of candidates of different colours. A return to this type of evolutionary path seems to be the main achievement of the Orange Revolution. Now Ukrainians can again elect their leaders in free and fair elections, with full responsibility for their choice and for the authorities they bring to power. The 2010 presidential elections confirmed this trend.

Economic developments in Ukraine show a somewhat different side of the story. While politically Ukraine stagnated and even deteriorated during Kuchma's second term, Ukraine's economy has more or less steadily progressed over the past 20 years. Despite all the drawbacks of the Soviet legacy, a high degree of corruption, inefficient institutions, and political havoc, since independence Ukraine has managed to build an economy based on market principles, and create foundation for the future economic development of the country.

However, many of these developments took place despite the lack of political will and effective policy-making. Ukraine's economy developed to a large extent in parallel to rather than owing to political developments. In the longer run, however, the parallel existence of politics and the economy is impossible, as the country needs reforms to ensure future sustainable growth, particularly after the 15% drop in GDP observed in 2009. Thus, although the market economy has been de-facto established in Ukraine, many further reforms are needed if sustainable economic development is to occur.

Besides the fact that the Orange Revolution returned the country to its previous developmental trajectory, it has also resulted in pluralism becoming a deeply rooted feature of Ukrainian political and economic life. There are however two sides to this pluralism in Ukraine. On the one hand, Ukrainian pluralism can be understood as a reflection of the diversity and heterogeneous character of the country, where society and the political class recognise and tolerate internal differences. In fact, Ukraine is one of the few examples in Europe where a state, which is made up of such an amalgam of national, religious and ethnically

diverse people has managed to preserve its integrity and live in significant harmony.

On the other hand, this very same pluralism is a corollary of state weakness and societal and elite fragmentation. The Orange Revolution demonstrated that Ukrainian society values its pluralism and is prepared to defend it. Yet, in the absence of stable institutions and rules of the game, the country remains largely unmanageable and dysfunctional, resembling the early years of the presidency of Leonid Kravchuk. This same pluralism then is an obstacle to effective governance and the consolidation of democracy, something which carries inherent risk. In the event of the types of public disorder which are seen in failing states, society might be prepared to sacrifice the benefits of pluralistic expression for the sake of a 'strong hand' that might return the yearned for order. Indeed, the weakness and the perceived incompetence of the government over the last past five years have resulted in the wide spread belief that too much freedom leads to irresponsibility and disorder.

Nevertheless, the albeit flawed existence of pluralism in Ukraine is an important basis for its future development. It provides for some sort of economic competition or at least it precludes monopolisation. It is also the source of the variety of opinions present in public discourse. More importantly, pluralism prevents the consolidation of authoritarian rule in Ukraine, making the country a rare example in the post-Soviet context.

Despite the pluralism, Ukraine has so far failed to establish clear rules of the game and reach consensus on important objectives in terms of its state-building. Only some lower level consensus has been achieved, which has probably secured Ukraine's future as an independent and sovereign country. Yet, this is not enough to result in a coherent political nation. The fact that political elites still often choose to emphasise the divisive issues undermines national integrity.

Similarly, some consensus has been achieved in terms of the acceptance of democracy as the only 'game in town', at least in political rhetoric and programs in Ukraine. However, this is not necessarily because it is regarded as the most just and fair system. Rather, the sheer difficulty of imposing a monopoly of power by one political force makes democracy almost unavoidable for Ukraine. Importantly, no mainstream political force in Ukraine advocates any alternative to, or variations of, democracy (for example, along the lines of 'managed' or 'sovereign' democracy), even though some references to 'a strong hand' appeared in the latest presidential campaign. So Ukraine, unlike Russia and some other CIS states, does not reject the common European value of democracy as such. Nobody in Ukraine claims that democracy, civil society and freedoms are values imposed from outside as is the case in Russia.

Nevertheless, this entrenchment of democracy has not helped Ukrainian political elites to progress in terms of reforming the Constitution, which is widely seen as a set of 'meta-rules' of a political system and in terms of ensuring the independence of the judiciary. No progress has been made since the Orange Revolution despite the rhetorical commitment of key political actors to resolve the deadlock on either of these issues. The absence of a level playing field and a dysfunctional political culture meant that Ukraine was plagued by political infighting, short-termism and inadequate government during the 'Orange' years.

Weak civil society and low pressure for reform from within, means that this is unlikely to change in the near future. In fact, the low level of national consensus is attributable to the low level of trust among different groups of society and a lack of initiative or interest in changing things at the local level. The limited 'social capital' of Ukraine along with the atomisation of society means that the political class is not accountable and there is a dearth of resource for building a national consensus.

In a broader context, Ukraine lacks a consolidated vision of its place in the world. With question marks hanging over the Europeanness of its identity, allied to an increased reluctance on the part of large swathes of its population to be characterised by the subordinacy implied in its status as part of Russia's 'near abroad', Ukraine finds itself between two blocs unable to turn decisively one way or the other. While society remains ambiguous about the direction the country needs to move, as confirmed by various public opinion polls, the political class skilfully exploits this ambiguity in order to get the most from either Russia or the EU for corporate benefit. From this perspective Ukraine's indeterminate stance in the foreign arena is not merely the reflection of ambiguous identity, but also indicative of the short-term and narrow interests of the political class. These internal dynamics are compounded by the fact that the international actors, other than Russian, lack a vision for and of Ukraine.

Despite some initial signs of change, the Orange Revolution did not mark a breakthrough in the European integration of Ukraine. Since the Orange Revolution, the Ukrainian political elites have been endorsing Ukraine's participation in various EU initiatives and policies, such as the European Neighbourhood Policy (ENP) or Eastern Partnership (EaP). However, these policies have spectacularly failed to focus the minds and lengthen the time horizons of the political class in Ukraine. This is in stark contrast to the way the EU succeeded in engaging the political leaders in Central and Eastern Europe. This is not only due to the inherent vagueness of incentives and objectives of the ENP and EaP but also the domestic circumstances in Ukraine, namely the political instability which ensued in the aftermath of the Orange Revolution.

Integration with the EU has remained an abstract and distant prospect for many Ukrainian politicians and as such not capable of overriding short-term domestic considerations. Notwithstanding their declared commitments to the 'European choice', the 'Orange' governments failed to adopt a new strategy on European integration. In par-

ticular, the elites missed an opportunity to provide a coherent, clear and long-term strategic framework. A corollary of this was the lack of a radical overhaul of the institutional framework of European integration. To all intents and purposes, no effective leadership on European issues has emerged since the Orange Revolution. In the context of the intensive power struggle, any strategies requiring longer-term commitments, including EU-related matters, were relegated to the backburner.

In sum, this report shows that Ukraine has undergone significant change over the past two decades towards becoming a quasi-western social and political entity. Although the Orange Revolution did not fulfill many expectations, it ensured Ukraine can evolve. The most probable scenario for Ukraine's future is a continuation of its slow but evident move in the same direction, towards becoming an integral part of the West. This is, however, a long-term perspective. In the short run, poor governance and the fragility of its democratic institutions are an obvious threat to this general trend, making possible the erosion of democratic practices especially as the newly elected leadership appears to be less committed to democratic norms than the previous one. But Ukraine's major problem is not so much in the threats to democracy and civic freedoms, although the risk of their erosion remains, but, rather, in the challenges in achieving a radical improvement of the quality, efficiency, and functionality of the democracy achieved so far.

Introduction

Many negative opinions have been expressed about Ukraine following the dashing of the high expectations of the Orange Revolution. Somewhat paradoxically, these have emanated from both Western democracies and the non-democratic countries of the CIS, particularly Russia. While the EU member states and other Western democracies expected fast and profound changes in Ukraine, Russia's reaction to the Orange Revolution was rather dismissive, seeking to discredit developments in Ukraine in order to undermine any threats to the regime in Russia. Most significant of all perhaps is the fact that many if not most Ukrainians have themselves become disillusioned with developments that took place following the Orange Revolution. The fratricidal behaviours of the Orange leaders, which lead to unstable government and confrontation between the branches of power meant that those who hoped for a warm welcome from the EU and the emergence of a drive for reform in Ukraine were soon disappointed.

These failed expectations, very different in their nature, have created deep frustration in observers and resulted in a rather bleak picture of Ukraine both in the West and the East. Ukraine has been described as a lost case or even a failed state. The election of Viktor Yanukovich, the rival of the 'Orange camp' in 2010, as the president of Ukraine produced, to say the least, mixed feelings. For some it signified a return to

the pre-2004 Kuchma era and above all the failure of the Orange Revolution and the achievements that came in its wake. Yet, some optimists have focused on the fact that these were free and fair elections – in contrast to the situation in neighbouring countries, literally nobody knew who the winner was until the results were formally announced – which resulted in a broadly pain-free transfer of power. The optimists have urged the West to encourage and support Ukraine to preserve and adhere to its European choice. The high level representation of the EU at the inauguration of the new president and the Resolution of the European Parliament on the same day, which recognises Ukraine's right to EU membership, are clear expressions that the optimists are being listened to.

This report aims to present a portrait of Ukraine following the fifth anniversary of the Orange Revolution and the 2010 presidential election. The authors of this report, you will find, see Ukraine as a glass, which is half full and half empty, i.e. there are real concerns about Ukraine's future trajectory allied to the fact that the Orange Revolution has produced a legacy of which the benefits are clear to see. For example, Ukraine is a well-rooted electoral democracy with the longest list of free and fair elections among the CIS countries (presidential elections in 2005 and 2010 and parliamentary elections in 2006 and 2007), in contrast to many (semi-) authoritarian countries in the region. Yet Ukraine is still far from being a smoothly functioning constitutional democracy. Importantly, across Ukraine, even amongst those who supported either of the two primary presidential candidates – the 'blue' (Viktor Yanukovich) and the 'orange' (Yulia Tymoshenko) – larger swathes of society are longing for a new generation of political elites. This is evidenced by the high number of votes garnered by 'alternative' candidates in the first round (Serhiy Tyhytko and Arseniy Yatseniuk), the high number of those who did not support either candidate in the run-off and the fact that Yanukovich was ultimately supported by less than half of the voters.

The above factors are compounded by the complexities surrounding Ukraine's position, lodged as it is between the CIS space and the enlarged EU. Autocratic tendencies have intensified in many post-Soviet countries in the last five years, with Russia being the prime example of this trend. In this context Ukraine is, along with Georgia and Moldova, one of the exceptions in the CIS region. At the same time Ukraine stands in sharp contrast to its Western neighbours, the countries of Central and Eastern Europe which became EU member states during the two waves of enlargement in 2004 and 2007. The 'new' entrants are liberal democracies despite their internal problems. Ukraine failed to make up ground on this latter group of countries over the last five years and thus remains unambiguously categorised as a post-Soviet state. Indeed, arguably, the gap between Ukraine and its Western neighbours is even larger now than five years ago. The crucial question, which emerges then, is how long Ukraine can continue to exist as a non-consolidated democracy, lodged between the liberal democracies of the EU and the semi-authoritarian regimes of the CIS space – two groups which are on completely different trajectories. This question concerns not only the political system of the Ukrainian state but also Ukrainian society at large. The array of both negative and positive options facing Ukraine is vast. But the very fact that there are options available means that Ukraine cannot be considered to be the lost case many believe it to be.

1. Slow change – Ukraine’s fate?

The last five years in Ukraine have been characterised by ever greater disenchantment with the continuous fratricidal bickering between Ukraine’s two primary branches of power, which has resulted in an ongoing sense of political crisis. The economic recession caused by the financial crash of 2008 merely reinforced the sense of decline. Yet, judging over the perspective of the last two decades, Ukraine has come a long way, despite missing a number of opportunities. The first one was missed right after independence in 1991, when the old Soviet nomenclature, rather than the anti-communist dissidents, came to power in the ‘founding’ elections. The second one was missed in 2005 after the Orange Revolution when the popularity of the newly elected president Yushchenko and more importantly the high level of social capital, which was in evidence during the revolution, were frittered away in a play for power, but neglect of government (in the sense that there was a failure to govern by the ‘winners’). Nevertheless, throughout Ukraine has remained independent, integrated and at peace, despite its controversial historical legacy, regional diversity and multiethnic structure. Ukraine has moved towards becoming a market economy, although with many deficiencies. Finally, democracy has become entrenched insofar as the 2010 presidential elections adhered to democratic electoral practices and resulted in a peaceful transition of power. At best, how-

ever, it would appear that this democratic process may result in Ukraine following a path of incremental and gradual evolution, which was interrupted in the late 1990s when a re-elected President Kuchma effectively strengthened oligarchic rule, but which resumed as the result of the Orange Revolution.

1.1. Revolution as a return to an evolutionary path

The Orange revolution was hailed by many as a radical break with the Soviet legacy, a courageous albeit belated attempt to re-invigorate the spirit of the 1989-1991 democratic revolutions that succeeded in Eastern Europe but petered out in Ukraine and elsewhere in the former Soviet Union, excluding the three Baltic states – Estonia, Latvia and Lithuania.

The outlines of the European revolutions of 1848 re-emerged in that although the *ancien regimes* were defeated, liberal democracy did not follow. It seems that the revolutionary leaders, who made their careers inside old structures, of a self-serving and rent-seeking nature 'changed policies, but did little to change the institutions that implemented them. They had a democratic, European spirit, but no spirit of urgency and very little premonition of danger.'¹

The failure to carry out fast, coherent, and comprehensive institutional reform, as outlined in the chapters 3.1. and 3.3., has largely determined the failure of the Orange revolution and of the first 'Orange' government. Ukrainian politicians from the Orange camp came without a well-thought out and comprehensive strategy of reforms and also proved unable to reform the old institutions. These politicians were often mediocre and literally irresponsible, preoccupied with personal ambitions and under-endowed with professional talent.

They were often no different to other Central and East European politicians with one crucial difference which distinguished them:

¹ Sherr, J. 2006. The School of Defeat, *Dzerkalo Tyzhnia*, 22 July 2006.

Ukrainian politicians could not afford the luxury of incompetence, as in Ukraine the threat was not from other politicians, but from an entrenched Soviet-era nomenclature. This problem is exacerbated by the continued influence of Russia on this nomenclature and large swathes of Ukraine's populations, something which was not a factor in Central and Eastern Europe or the Balkans.

The deep personal animosity between the two Orange leaders – president Viktor Yushchenko and occasional prime minister Yulia Tymoshenko, which persisted from the beginning of the Orange Revolution, was heavily exacerbated by external factors (as shown in the Chapter 4.1). On the one side, the polite indifference ('benign neglect') of the West undermined the authority of pro-Western political forces in the eyes of Ukrainian society, and may even have discouraged politicians from displaying responsible 'European' behaviour. On the other side, the wide range of 'incentives' provided by Moscow may have contributed to the revival of Viktor Yanukovich's Party of Regions and encouraged some Orange politicians (including Yulia Tymoshenko) to flirt with Kremlin, in a rather opportunist hope of tipping the balance in her favour.

Structural factors have also contributed. Since independence Ukraine has managed to keep a delicate balance between the two political major outlooks which were transformed into political forces – pro-Western 'democrats', often labelled and demonised as 'nationalists', and anti-Western 'Sovietophiles', the mysterious 'pro-Russian fifth column'. The real picture was certainly more complex and hardly reducible to a crude bi-power model of 'clash of civilisations'. But this apparent bipolarity was a convenient heuristic with the power to rapidly mobilise support, something the strong and post-Soviet authorities opportunistically employed, as outlined in the Chapter 3.2. of this report. A parallel external bipolarity was employed in a similar way. The natural advance of the 'West' was counterbalanced by harsh anti-Western propaganda emanating from Russia as well as from the pro-Russian, mass media, poli-

ticians, and the Orthodox Church of Moscow Patriarchate in Ukraine. The 'soft power' of western institutions and western living standards were countered by the crude power of anti-Western resentments and alleged 'higher spirituality' of Russian/imperial messianism.

Social ambivalence, dubbed by some as 'post-Soviet schizophrenia', has also contributed to the stability (and stagnation) of Ukrainian society and has largely facilitated the survival of post-Soviet elites in a relatively pluralistic and competitive political and economic environment. Such social ambivalence, namely peoples' simultaneous acceptance of incompatible values and expression of contradictory, incongruent attitudes is hardly unique to Ukraine. It occurs in any society in transition as people lose one system of values but fail to acquire and internalise another. In Ukraine, however, social ambivalence was reinforced by weak, fluid, and split identities, skillfully exploited by the post-Soviet elite in their divide-and-rule policies (where 'divide' means primarily distort and disorient). Thus, for more than a decade, they successfully maintained authoritarian rule by manipulation rather than by coercion, representing themselves in the political arena as the 'lesser evil' and a natural peacekeeper between extreme, dangerous, and irresponsible forces.

The 2004 Orange revolution tipped the balance against this elite, but only temporarily. A battle had been won by the nascent civil society; however, the ossified authoritarian state had not yet lost the war. Moreover, the West failed to come to the support of this emergent democracy with an offer a membership prospect of the EU, or to act as a protector, as was the case for the similar unconsolidated democratic regimes in the Balkans where 'third-party enforcement' helped break the vicious circle of social mistrust and non-cooperation, and to change radically the prevailing paradigm of social behaviour and political development. In Ukraine, the revolution was, as in 1991, hijacked by the opportunistic elite that used a genuine popular national-democratic movement for their personal, corporate, particularistic purposes.

In both 1991 and 2004, the revolutions resulted in pacts between the moderates from both sides who marginalised radicals in their own camps. In 1991, the 'sovereign-communists' led by Kravchuk, outmanoeuvred the pro-imperial Communist Party faction on the one side, and the moderate leaders of Rukh who outnumbered the more radical anti-communists on the other. In 2004, the incumbent president Leonid Kuchma and his associates made a compromise deal with Viktor Yushchenko at the expense of Viktor Yanukovych and his team, on one side, and Yulia Tymoshenko, 'Pora', and other revolutionaries on the other side. In other words, due to the Kuchma-Yushchenko compromise, which paved the way for the run-off elections, the radical groups represented by Viktor Yanukovych, and Yulia Tymoshenko and 'Pora', were sidelined. In both cases, the revolutions resulted in the 'transplacement' (rather than replacement) of the elites, something which did not help in the transformation of the country.

As a result, following the Orange Revolution, the authoritarian-esque 'dominant power politics' (a political system characterised by the dominance of one political institution which in Ukraine was the Presidency) came to an end. It was replaced, once again, by 'feckless pluralism', rather than a properly institutionalised and effectively functioning democracy. Countries with feckless pluralism

'tend to have significant amounts of political freedom, regular elections, and alternation of power between genuinely different political groupings. Despite these positive features, however, democracy remains shallow and troubled. Political participation, though broad at election time, extends little beyond voting. Political elites from all the major parties or groupings are widely perceived as corrupt, self-interested, and ineffective. The alternation of power seems first of all to trade the country's problems back and forth from one hapless side to the other. Political elites from all the major parties are widely perceived as corrupt, self-interested, dishonest, and not

*serious about working for their country. The public is seriously disaffected from politics, and while it may still cling to a belief in the ideal of democracy, it is extremely unhappy about the political life of the country. Overall, politics is widely seen as a stale, corrupt, elite-dominated domain that delivers little good to the country and commands equally little respect. And the state remains persistently weak. Economic policy is often poorly conceived and executed, and economic performance is frequently bad or even calamitous. Social and political reforms are similarly tenuous, and successive governments are unable to make headway on most of the major problems facing the country, from crime and corruption to health, education, and public welfare generally.'*²

There was however one key difference between the opportunities presented by the events of 1991 and 2004. As the first Ukrainian president, Leonid Kravchuk had actually little choice but to accept this kind of 'pluralism'. There was no compunction on his part to introduce liberal democracy, the rule of law or the free market. Furthermore after the Communist party was disbanded in 1991, he had no institutional mechanisms or resources to curb either fecklessness or pluralism in the country by reintroducing authoritarian rule. Yushchenko, in contrast inherited rather effective mechanisms of the 'blackmail state' whimsically created by Leonid Kuchma³. However, Yushchenko refrained from the kind of selective application of law and use of 'kompromat' (compromising evidencing) collected by his predecessors to raise criminal charges against political opponents. But he did not replace this informal mechanism of state domination by formal and really effective mechanisms of

² Carothers, T. 2002. The End of the Transition Paradigm, *Journal of Democracy*, vol. 13, no. 2 (2002).

³ Darden, K. 2001. Blackmail as a Tool of State Domination: Ukraine Under Kuchma, *East European Constitutional Review*, vol. 10, nos. 2-3 (2001). Such a state is based on three pillars: (1) widespread corruption tolerated, even encouraged by the government; (2) effective surveillance and collecting of compromising materials ('kompromat') to keep everybody on a hook; (3) selective application of law against disloyal subjects.

a democratic state based on the rule of law, something which resulted in an institutional vacuum and procedural deadlock, a chaotic situation where neither informal nor formal rules worked properly.

As a result Ukraine got stuck in feckless pluralism, which can become either a staging post on the road towards consolidated democracy, or one back towards authoritarianism. In fact, in 2004 Ukraine returned to the evolutionary development that was interrupted by the election of Kuchma in the late 90s. The re-election of Kuchma for a second term in 1999 resulted in the capture of the state by the President surrounded by oligarchs. Up until then, Ukrainians had the government they chose, in the sense that both Leonid Kravchuk and Leonid Kuchma (the first time round) were elected in free and, more or less, fair elections, from the plurality of candidates of different colours. A return to this type of evolutionary path seems to be the main achievement of the Orange Revolution. Now Ukrainians can again elect their leaders in free and fair elections, with full responsibility for their choice and for the authorities they bring to power. The 2010 presidential elections confirmed this trend.

Ukraine's return to the evolutionary development does not mean, of course, that Yushchenko would have merely to continue the work of Kravchuk and the early Kuchma – as if nothing had happened. The Orange Revolution resulted in some very important changes to and in Ukrainian society, which Yushchenko and the Orange camp in general should have built on and used as an immense resource.

First, Ukrainian society had developed into one which was more resilient and resistant to authoritarian pressure than had once been the case and certainly that many people expected. This development can be charted as it was in evidence in the 2002⁴, 2006, and 2007 parliamentary elections. The last two were especially interesting: despite

⁴ It was the first time Ukrainians elected the Parliament according to the 'mixed' system. For the first time half of the MPs were elected based on the party lists, while the other half, as before, on the majoritarian basis. The 'Our Ukraine' opposition party appeared to be the winner of the party lists contest.

the expressions of 'mass disappointment' in post-revolutionary developments, and despite real and alleged mistakes made by the 'Orange' leaders, the majority of the voters confirmed their commitment to the revolutionary ideals, by voting for Orange camp representatives; moreover, they clearly preferred the more assertive Tymoshenko over the seemingly indecisive Yushchenko, as evidenced by the rapid decline of Yushchenko's popular support.

Second, the electoral base of the Orange camp has broadened substantially within the last decade even before the Orange Revolution— from the westernmost (and least Russified and Sovietised) regions of Western Ukraine (Galicia and Volyn) which until their annexation by the Soviet Union in 1939 belonged to Poland, to the vast areas of central Ukraine, both on the right and left banks of the Dnipro river (which till the mid-17th/late 18th centuries also fell to Poland's First Rzeczpospolita and after that Russia). This historical legacy is highly important because it resulted in a radically different political culture and social *habitus*, to that of lands controlled by the profoundly autocratic Muscovy and Russia.

One may speculate whether further movement eastward is possible, but even the limited expansion of the ideological 'West' within Ukraine brought about palpable electoral results – from 25–30% of the vote for pro-Western 'democrats' in the early 90s to the about 50% that the Orange parties can muster today.⁵

Third, even though Ukraine is said to be divided in a variety of ways (ethnically, linguistically, culturally etc), as evidenced by the voting patterns found in several recent electoral campaigns, this division is not as acute at least in ideological terms, as it was in the early 1990s. A decade ago, in political terms south-eastern Ukraine was overwhelmingly represented by communists who made up the largest faction in

⁵ Arel, D. 2005. The 'Orange Revolution': Analysis and Implications of the 2004 Presidential Election in Ukraine, Third Annual Stasiuk-Cambridge Lecture on Contemporary Ukraine. Cambridge University, February 25, 2005. Available at http://www.ukrainianstudies.uot-tawa.ca/pdf/Arel_Cambridge.pdf.

the parliament, while western Ukraine was predominantly represented by national democrats, the second most influential force in Verkhovna Rada. No alliance between these political enemies was even imaginable. Today, the communists have been virtually wiped out as political force, with a dismal 5% of the vote. The national democrats have been absorbed into a broader 'Orange' body. As things stand today, a coalition of any political configuration can be envisaged. But while the West/East, orange/blue divide has remained and perhaps even increased, it is being institutionalised in a pragmatic non-dogmatic way, meaning that any negotiations, compromises and political deals are on the cards. This is the fourth achievement of 2004 the Revolution: Ukrainians learnt to negotiate and seek compromise. Diversity has become an asset.

Fifth, Ukraine's elites, including the demonised oligarchs, have become increasingly integrated into the West on multiple levels (primarily in business and leisure practices). They are coming to recognise the economic benefits of integration with the EU's market and the need for the rules of the game in the future. Even though the temptation to use the 'free' financial and propagandistic resources offered by Russia remains strong and, for some groups, irresistible, their pro-Russian rhetoric, in most cases, remains hollow and, as Kuchma evidenced, purely opportunistic.

Sixth, Ukrainian society at large has gradually rid itself of the vestiges of Soviet paternalism, becoming more self-sufficient, self-confident and self-reliable. Grass-root civic initiatives are not confined to the big cities but have spread throughout the country. Non-governmental organisations, limited in terms of their impact on decision-making and public opinion, as shown in the Chapter 3.4., have matured and diversified their activities, and have a good record of making a difference albeit on a rather small scale.

And finally, despite strong economic, political and diplomatic pressure from Russia, Ukraine pursues independent politics. And despite the US and the EU's preoccupation with more urgent and daunting

problems, Ukraine is well within their zone of interest, to the point that it is no longer perceived as a legitimate sphere of exclusive Russian influence.

1.2. The enduring effects of Ukraine's historical legacy

Independent Ukraine emerged not only as a legal successor to the Ukrainian Soviet Socialist Republic but also as its institutional, societal, cultural, and behavioural continuation. In practical terms it meant that Ukraine inherited dysfunctional institutions, an often incompetent and frequently self-serving elite, an atomised population with a largely non-civic political culture. The mentality of *Homo Sovieticus* was suppressed. The emergence of a narrative which supposedly displayed 'new thinking' and 'democratic values' on the part of the political elite was merely a camouflage for the continuation of what could be termed a Leninist-Stalinist mindset: a conviction that politics is a zero-sum game, the winner gets all, the ends justify the means, and the state is a supreme, nearly deified entity. Compromise or political agreements are made not because of the logic of appropriateness, but rather because of the heterogeneity and pluralism of Ukraine which precludes any monopolisation of power. As a result, compromise tends to emerge as a last resort and a means of firstly, avoiding conflict and secondly, getting at least a piece of the pie.

Part of this legacy is a superficial (and essentially populist) notion of democracy as 'majority will', and neglect of (or even contempt for) a liberalism that stands for minority rights, the rule of law, checks and balances, equal opportunities, and many more principles and mechanisms that provide the nuances lacking in the rather crude notion of democracy inherited from Marxism-Leninism. Rather predictably, post-Soviet democracy developed primarily the elements that had existed, at least verbally, in 'socialist democracy' – referring mostly to its axiology, to the system of values where civic rights and freedoms occupy their due place. But it failed to develop elements that had never existed be-

fore and which make democracy function: first of all, the rule of law, but also the institutional and procedural elements that ensure fair voting and all the associated processes and procedures. It is noteworthy that the main elements of 'good governance' in the West – like responsiveness of the authorities, vertical and horizontal accountability, distributive justice – have no firmly established Ukrainian analogues, while some other terms like transparency, participation, competitiveness remain shallow and slogan-like, never explained or elaborated. The illiberal democracy that evolved in Ukraine seems not only to marginalise or distort, in public discourse, terms and concepts related to liberalism, but also to completely exclude the notions related specifically to the quality of democracy, namely its essential content and procedures.

Instead, post-Soviet political culture is generally characterised by paternalism, low initiative, fear of freedom, anomie, social ambivalence, and atomisation of society that results, in particular, in low levels of trust, a dearth of solidarity, limited contractual discipline, and a circumscribed degree of cooperativeness. In sum, Ukraine lacks many of the components which constitute social capital, namely the 'network of associations, activities, or relations that bind people together as a community via certain norms and psychological capacities, notably trust, which are essential for civil society and productive of future collective action or goods, in the manner of other forms of capital'.⁶The term gained currency within the so-called 'path-dependence' theory that established a strong correlation between the level of social capital, civicness, and the functional capacity of institutions. The term heralds the rather simple truth that the point of arrival depends on the point of departure. Historical determinants, however, all their importance notwithstanding, should not sideline the mundane issues of a poor institutional design, a corrupt elite, irresponsible and incompetent rulers, a passive and demoralised population, and many more problems determined by concrete human agents rather than reified historical forces.

⁶ Farr, J. 2004. Social Capital. A Conceptual History, *Political Theory*, 32:1 (February 2004), p. 9.

So far, Ukrainian politicians have failed to design institutions and introduce policies that could improve the political culture, increase civic spirit and social cohesion. On the contrary, since the early years of Ukraine's independence, they deliberately deepened societal anomie and manipulated social ambivalence by sending mixed signals and pursuing confusing policies that helped them to keep society atomised, disoriented, and alienated. Actually, the gradual accumulation of social capital and sense of civic duty that ultimately lead to the Orange anti-authoritarian outbreak, occurred in spite of the efforts of the ruling elite. It was in fact the results of the fact that Ukraine, since Gorbachev's efforts at perestroika, had become a more open country, with freer information flows. It had absorbed western ideas and practices, and was home to national and international NGOs. In a sense, the Orange Revolution marked a sort of expansion of 'Europe' within Ukraine.

Business pluralism and economic openness have also contributed to a gradual growth of social capital and civic mindedness. A free market economy, however distorted, requires responsibility and contractual discipline, encourages initiative and cooperation, discourages paternalism, and strengthens people's self-confidence and independence. The business and political class in Ukraine have sufficiently strong links to the West to accept western values and practices rather unquestioningly, even though the tendency to pay lip service to them still persists. However reluctantly and incoherently, these classes follow an East European rather than 'Eurasian' pattern of development, in turn ensuring that western ideas and practices spread across the whole of Ukraine, particularly the more Sovietised Southern and Eastern regions. Thus, despite the difficult historical legacy, Ukrainian political elites have moved towards at least trying to seek compromise, while society and business have learned to survive and develop without the state being able to provide for even minimal conditions.

1.3. The gradual emergence of a market economy

Economic developments in Ukraine show a somewhat different side of the story. While politically Ukraine stagnated and even deteriorated during Kuchma's second term, returning only to its evolutionary trajectory following the 2004 presidential election, Ukraine's economy has more or less steadily progressed over the past 20 years. Despite all the drawbacks of the Soviet legacy, a high level of corruption, inefficient institutions, and political havoc, since independence, Ukraine has managed to build an economy based on market principles⁷, and create a foundation for the future economic development of the country.

For a start, private property became the dominant form of ownership, supplanting state ownership⁸. About 80% of legal entities in Ukraine are private. That alone enabled the economy to become more efficient and compete on world markets, and develop a resilience to adverse shocks such as gas price hikes. Privatisation was thus an important means of shifting the ownership structure in the country away from the state. The mass privatisation that included small and medium enterprises was de-facto over by 1999.

Prices were mostly liberalised and an Anti-Monopoly Committee was established to prevent market abuses. Prices for oil and petroleum products were liberalised in the first years after independence, and gas prices were hooked to European petroleum-product prices via a transparent formula (albeit only in 2009). Price liberalisation, though inflationary, was important for the conversion of a centrally planned economy into a market economy, thus contributing to further economic progress in the country.

The state's monopoly on foreign trade operations was abolished opening the way to trade liberalisation. Negotiations with the World

⁷ Aslund, A. 2009. How Ukraine Became a Market Economy and Democracy.

⁸ This chapter is partly based on the Institute for Economic Research and Policy Consulting (IER) project 'The Economy of Ukraine' prepared for the Center for EU Enlargement Studies (Hungary) in 2008.

Trade Organisation (WTO) brought benefits even before the country joined the organisation. For instance, the Customs Code bringing Ukraine into compliance with various WTO rules entered into force in 2004. Import tariffs for industrial goods were aligned with the country's tariff offer a year later. Eventual membership of the WTO in 2008 resulted in the further liberalisation of its tariff and non-tariff barriers to trade. Freer trade has brought important benefits both for households, and for the economic system as a whole.

Monetary and financial systems developed, with the National Bank being the sole authority responsible for monetary and exchange rate policy in the country. The dollarisation of the economy, so prevalent in the 90s, had been gradually diminishing before it reemerged again during 2008 global crisis. Non-monetary transactions (barter, non-transparent mutual settlement of arrears, etc.), pervasive until the end of 1990s have all but disappeared.

Major fiscal reform was implemented with the introduction of the Budget Code in 2002. The fiscal system was brought more in line with the International Monetary Fund's (IMF) standards. Local authorities were given more autonomy to set their budgets, while receipts from privatisation were included in financing items and not revenues, as was the case before.

Tax reform has been also implemented. The tax burden was reduced for enterprises and, especially, for individuals. In particular, personal income tax rate was set at 15% instead of progressive tax rates. Moreover, a simplified system of taxation was established stimulating the development of small (micro) business.

In general, a lot was done to overcome the legacy of the Soviet Ukraine. Modern Ukraine has become integrated into the global economy, something that has opened up the way for new growth opportunities for businesses, and offered better choices for consumers.

However, many of these developments took place despite the lack of political will and effective policy-making. Ukraine's economy devel-

oped to a large extent in parallel rather than owing to political developments. The statistics are compelling in this regard. By 2000, for instance, actual GDP in the country had dropped by around 60% of its 1991 level. Any subsequent growth occurred without an increase in productive capacity: according to the State Statistics Committee of Ukraine, in 2009 only 19.2% of manufacturing enterprises used technologies aged less than 5 years old, on average. Just over a quarter of companies used 5 to 10 year old technology, while the remainder used older technology. In other words, it was the employment of under-utilised capacity and underemployed people that lead to growth.

In the longer run, however, the country needs reforms to ensure future stable growth, particularly after the 15% drop in GDP observed in 2009. Paradoxically, political disagreements might have helped the economy to get through the 2008 economic crisis as they prevented or postponed the adoption of populist decisions that would have made the fiscal position even worse (for instance, an increase in the funding of social security was capped for almost a year). Yet, constant political conflicts hamper the implementation of reforms needed to reduce fiscal pressures and eliminate the shadow economy. Further progress in regulatory reform is important for SME development. Much of the country's physical infrastructure is obsolete or past its life-span and is becoming a bottleneck for economic progress. Innovation and investment is at a standstill. The absence of administrative and territorial reform hurts the prospects of fiscal decentralisation and thus regional development. Thus, although the market economy has been *de-facto* established in Ukraine, many further reforms are needed if stable economic development is to occur.

2. Pluralism – a basis for the future

Besides the fact that the Orange Revolution returned the country to its previous trajectory, it has also resulted in pluralism becoming a deeply rooted feature of Ukrainian political and economic life. There are however two sides to this pluralism in Ukraine. On the one hand, Ukrainian pluralism can be understood as a reflection of the diversity and heterogeneous character of the country, where society and the political class recognise and tolerate internal differences. In fact, Ukraine is one of the few examples in Europe where a state, which is made up of such an amalgam of national, religious and ethnic diversity has managed to preserve its integrity and exist in significant harmony.

On the other hand, this very same pluralism is a corollary of state weakness and societal and elite fragmentation. The Orange Revolution demonstrated that Ukrainian society values its pluralism and is prepared to defend it. Yet, in the absence of new institutions and rules of the game, the country remains largely unmanageable and dysfunctional, resembling the early years of the presidency of Leonid Kravchuk. This same pluralism then is an obstacle to effective governance and the consolidation of democracy, something which carries inherent risk. In the event of the types of public disorder, which are seen in failing states, society might be prepared to sacrifice the benefits of pluralistic expression for

the sake of a 'strong hand' that might return the yearned for order. Indeed, the weakness and the perceived incompetence of the government over the last past five years have resulted in the wide spread belief that too much freedom leads to irresponsibility and disorder.

Ukrainian pluralism is therefore not fully-fledged in the sense that it involves a variety of societal actors shaping policies. Political power in Ukraine still lies with electorate and a small concentrated class of political and business elites. Ukrainians can decide who will govern the country through elections. But mechanisms for influencing public policy between the elections and keeping the political class accountable are largely non-existent. Key societal groups, such as trade unions, interests groups, business organisations, non-governmental organisations and other kinds of formal and informal coalitions are removed from the policy process. They are neither able to influence policy, nor represent the range of societal cleavages and interests. In other words Ukrainian pluralism is limited and hardly conducive to the development of a truly open society with competing views which in turn act as a stimulus to progress.

Nevertheless, the albeit flawed existence of pluralism in Ukraine is an important basis for its future development. It provides for some sort of economic competition or at least it precludes monopolisation. It is also the source of the variety of opinions present in public discourse. More importantly, pluralism prevents the consolidation of authoritarian rule in Ukraine, making it a rare example in the post-Soviet context.

2.1. Pluralism in politics by default

Ukrainian pluralism that was in evidence following the Orange Revolution did not appear out of nowhere; it had emerged during previous phases of Ukrainian independence. Indeed, for most of its independent existence Ukraine has been a relatively open country, exhibiting

dynamic and competitive politics. This was in evidence in the relatively free and fair presidential elections of 1991 and 1994. This competitiveness, however, was ‘rooted less in robust civil society, strong democratic institutions or democratic leadership and much more in the inability of incumbents to maintain power or concentrate political control by preserving elite unity, controlling elections and media and/or using force against opponents.’⁹ It resulted primarily from the sudden collapse of the USSR that deprived authoritarian rulers of the organisation, skill, and finances necessary to maintain power and/or concentrate political control. Although this stimulated the emergence of pluralism, it also led to dysfunctional and less-than-democratic governance. This ‘feckless pluralism’, referred to in the Chapter 1.1, is a phenomenon typical of many illiberal democracies, primarily in the Third world.

The political crises that haunted Ukraine since the collapse of the first Orange government in September 2005 were the consequence of this kind of ‘feckless pluralism’ and lack of effective institutions, which adhere to the rule of law. Personal rivalries, clashing business interests, and external interference certainly contribute to the problem. In essence, however, there exists an institutional inability to deal with conflicts (immanent to any democracy) in a legal and legitimate way. The most likely scenario for countries affected by ‘feckless pluralism’ – and post-Yeltsin’s Russia is illustrative in this regard – is the emergence of ‘strong’ rulers who meet public expectations of ‘law and order’ and, with such a popular mandate, curtail ‘chaotic’ pluralism and replace it with dominant power politics.

It is highly improbable, however, that this will happen in Ukraine – the last attempt to do so in 2004 resulted in the Orange revolution. It is made more improbable because Ukraine’s regional differences and multiple societal and elite divisions make any consolidation of authori-

⁹ Lucan W. 2002. Pluralism by Default in Moldova, *Journal of Democracy*, vol. 13, no. 4 (2002). See also Lucan W. 2005. Authoritarian State Building and the Sources of Regime Competitiveness in the Fourth Wave. The Cases of Belarus, Moldova, Russia, and Ukraine, *World Politics*, vol. 57, no. 2 (2005).

tarianism even more difficult than the consolidation of democracy. Opinion surveys reveal that the majority of Ukrainians, however frustrated and disappointed by their corrupt politicians and dysfunctional institutions, refuse to trade in democratic freedoms for promises of ‘law and order’ and, of course, ‘prosperity’¹⁰. This means that Ukraine, for better or worse, will remain pluralistic and ‘fecklessly democratic’ for the foreseeable future. One may expect that Ukraine’s post-Soviet elite, after exhausting itself in fruitless infighting, would have little choice but to gradually institutionalise existing pluralism, to secure the rule of law, and to establish effective checks and balances. Sooner or later, they might come to understand that what West European barons and oligarchs came to recognise long ago – that politics is not a zero-sum game, that winners do not get all, that might does not necessarily make right, and that the goals should not justify the means.

2.2. Pluralism in business: the basis for political competition

The economic dimension of pluralism is strongly linked to the kinds of political developments outlined above. On the one hand, it is the business pluralism among the economic clans that provides for political pluralism and creates safeguards against monopolisation of power. On the other hand, pluralism in business is largely limited to the same powerful economic clans. This kind of pluralism is unlikely to push for further economic liberalisation, which would allow the development of small and medium enterprise (SME) and participation in policy – making via equal and transparent rules of the games, including regulated

¹⁰ An opinion survey carried out by a subdivision of the National Academy of Sciences on October 29-31, 2008 (after the global economic crisis hit Ukraine severely) revealed that only 20% of respondents answered positively to the question «Would you like to trade off national independence for economic well-being?». Furthermore 72% responded negatively, and 18% declined to answer.

See <http://maidan.org.ua/static/news/2007/1226089879.html>

lobbying opportunities. Moreover, this pluralism without effective state institutions and political leadership results in slow change, of which we wrote in Chapter 1. Since there is no political leadership to push for reforms, it takes years for various economic clans to balance their interests and arrive at something which suits them all. The WTO membership negotiations had been a good example of this kind of gradual balancing of business interests. Metal producers were net gainers lobbying for accession, while the automotive industry was strongly against as high tariff and non-tariff barriers provided an important shield for the domestic car market. The agricultural lobby was also very strong. As the result, it took the country more than 14 years to complete negotiations.

Ukraine's pluralism of political parties is largely based upon pluralism in business. All major political parties have identifiable business roots. In many cases a single political party represents three or four large financial and industrial groups, and few groups would appear to support more than one political force.

According to the business dossier of ProUa.com, there are 42 financial and industrial groups in the country. They have business interests in various sectors of the economy, which requires the continual balancing of economic policy decisions.

The interests of business groups frequently intersect, as they often own enterprises in the same sectors of the economy. For instance, almost all the largest financial and industrial groups are involved in metal production, the largest manufacturing sub-sector in the economy, accounting for 22% of industrial sales in 2008. Energy, machine building and financial sector assets are also in the portfolio of the largest groups, while agriculture, food industry, and construction are frequently associated with smaller but still significant groups.

To promote and defend their interests, financial and industrial groups support various political forces and use media resources. For instance, the Party of Regions is supported by Rinat Akhmetov (System

Capital Management group), Andriy Kliuyev (Ukrpodshypnik Corporation), and Dmytro Firtash (Group DF), while the Bloc of Yulia Tymoshenko by Vitaliy Gayduk (Industrial Union of Donbass), and Kostyantyn Zhevago (Financy i Kredyt Group). Volodymyr Boyko (Illyich Steel MMK) financed (before 2007) the Socialist party, and Kostyantyn Grigorishin (Energetychniy Standard) the Communists¹¹. Some businessmen prefer to become members of Parliament as a means of protecting their business interests, such as Rinat Akhmetov, one of the richest people in Ukraine, or even members of the government, as is the case with the new government of President Viktor Yanukovych.

Limited market reforms, which stimulated the emergence of private ownership and a certain level of property rights protection, created an environment for the development of pluralism in business. In 2008, about 65% of value added was produced by private enterprises according to EBRD estimates¹². The state withdrew from most sectors of the economy, while privatisation created an opportunity for initial capital accumulation. As mass privatisation ended, the focus of business groups has shifted from asset accumulation to asset protection.

A key stage in asset protection was reached in 2008 when after years of discussions and amendments the law on joint stock companies (JSC) was finally adopted. Previous legislation in this sphere was outdated, failing to cover all necessary issues regarding JSC activities. The new law covers all the main issues of corporate governance in Ukraine, establishing a framework for the functioning of the JSCs, and guaranteeing a higher degree of protection of shareholders', employers', and creditors' rights. It should also stimulate the development of the stock market and lead to a reduction in counterfeiting. The introduction of this law explains the considerable improvement in Ukraine's 'Doing Business' ranking (particularly in the category on 'protecting investors') jumping from

¹¹ <http://www.investgazeta.net/>

¹² <http://www.ebrd.com/pubs/econo/tr09.htm>

143 in 2009 to 109 a year later. The fact that it still lags behind other Eastern European and Central Asian countries suggests that property right protection in the country remains incomplete.

A development of a wide and strong SME segment in the economy usually adds an additional dimension to pluralism in business, as these enterprises do not have direct representation in power structures. Thus, they have to follow more conventional rules of democratic societies, such as forming associations to protect their interests, which subsequently lobby for these interests in executive and legislative branches of power.

In Ukraine, the environment was relatively conducive to small (micro) businesses, even before the Orange Revolution. For instance, individuals could register themselves as entrepreneurs and run economic activity by being entitled to pay fixed lump-sum taxes, and conduct very simple bookkeeping. A simplified tax regime has also been introduced for small enterprises. In 2008, small enterprises produced about 16% of total output and employed almost a quarter of hired employees in the country as compared to 8% and 15% in 2000.

However, the SME development in the country has not yet resulted in changes to lobbying practices. The establishment of the approximately 5000 business associations currently in existence in Ukraine has not resulted in the conversion of SMEs into a consolidated force able to influence business interest representation at a national level, though some of them have been influential at local levels. According to Vyacheslav Bukovets, the Vice-President of the Union of SME and Privatised Enterprises in Ukraine, the weakness of SME business associations is largely attributable to the low trust of business people in associations, the absence of internal motivation for integration, the opposition of authorities, and poor financial resources¹³. In turn, weak business associations mean that the diversity of SME views is not properly represented and thus frequently not taken into account when economic policy is formed.

¹³ <http://www.academia.org.ua/?p=254>

2.3. Regional diversity

Another source of pluralism in Ukraine is its regional diversity. This is frequently misconceived and misrepresented in terms of Ukraine as seemingly divided and bi-polar, split between eastern and western parts. In fact, the geographical divides in Ukraine are much more complex than this. The nuances which pertain to these regional cleavages are highly instructive.

Firstly, the 'classic' east-west divide fails to account for the hybrid nature of the central oblasts of Ukraine. These represent, not only geographically but also politically and linguistically the 'middle ground' between the east, which borders on Russia, and the west, which borders primarily on EU member states. Both in terms of language preference (the use of Ukrainian versus Russian) and political attitudes, central regions play a moderating role insofar as differing viewpoints coexist in peace, notwithstanding the increasing resemblance of voting patterns to those found in Western Ukraine. Indeed, several studies highlight the rather hybrid nature of Ukraine, with some of them suggesting that there are ten regions in Ukraine (where the notion of the 'Eastern Ukraine' is deconstructed), while others suggesting there are 'twenty-two or more 'Ukraines'', by emphasising the relevance of local and social identities, as opposed to ethnic identities¹⁴.

However, language policy since the Orange Revolution tended to exacerbate perceived regional differences rather than take advantage of and build on this moderating role. Numerous measures, especially in the media were viewed in Eastern regions as evidence of an enforced 'Ukrainisation'. While they did not necessarily go beyond existing legislation, the fact that these policies were accompanied by other actions such as the increased prominence in the media of the struggle for Ukrainian independence and ethnic Ukrainian suffering during the *ho-*

¹⁴ See various contributions to the volume Hrytsak, Y., Portnov, A, Susak, V. (eds.). 2007. 'L'viv-Donetsk: Sotsial'ni Identychnosti v Suchasnii Ukraini'. Special Issue of *Ukraina Moderna*.

lodomor (the famine between 1932-33 caused at least in part by Stalin's policy of forced collectivisation), strengthened the perception that they were part of a campaign to drive the Russian language out of use wherever possible. In the case of the holodomor, it was not the famine per se which discomfited citizens, but rather the attempt to portray it as a genocidal act against the Ukrainian nation, particularly by president Yushchenko. This, in combination with his policies on strengthening the role of the Ukrainian language, significantly aggravated the leadership in Russia, something many in Eastern Ukraine regarded as disturbing and unnecessary, particularly since most of the population in the East desires to maintain good relations with Russia.

The second reason is that a simplistic east-west distinction does not adequately take into account complexities surrounding the Crimean peninsula and its special nature within the Ukrainian context. As the only region with its own Parliament and Constitution, Crimea possesses some degree of autonomy from the centre. In addition, the presence of the Russian Black Sea Fleet, the ethnic composition of the peninsula (58% Russian, 24% Ukrainian, and 12% Crimean Tatar according to the last census) and the pro-Russian orientation of many of its residents set it apart from other Ukrainian oblasts. The distinctive features of the Crimean peninsula became more salient during the post-Orange Revolution period because the deteriorating relationship between Ukraine and Russia increased the potential for conflict with regard to the Crimea in general and Sevastopol in particular.

Third, various parts of Ukraine have vastly differing historical trajectories, which continue to shape their identities to a greater or lesser extent. Certainly the fact that the western Ukrainian oblasts only became part of the Ukrainian SSR following the Second World War, when the eastern ones had already been in the Soviet Union for over 20 years and part of the Russian Empire since 1654 (when Ukraine and Russia signed a treaty, which resulted in the effective annexation of these parts into the Russian empire), represents a crucial difference in the

experiences of these regions. However, it should also be noted that Transcarpathia was part of Hungary for many centuries, and belonged to Czechoslovakia from 1919 to 1939. Northern Bukovina had been part of the Moldavian Principality for three centuries, after which it entered the Austrian Empire and then (in 1918) came under Romanian control until 1940. In the east, 'Sloboda Ukraina' was characterised by Cossack activity, although it remained more subordinate to Moscow than the Zaporozhian Sich, another traditional Cossack territory. Kharkiv, which was part of 'Sloboda Ukraina', subsequently served as the capital of the Ukrainian Soviet Socialist Republic from 1917 to 1934. The Crimean peninsula was affiliated with the Ottoman Empire for centuries before being annexed by Russia in the late 18th century and 'gifted' to Ukraine in 1954 to celebrate 300 years of 'brotherhood' (i.e. in commemoration of the signing of the above-mentioned treaty between Ukraine and Russia).

These different historical trajectories are related to two other factors: the presence of significant ethnic minorities in the current border regions and the relationship of these regions to the countries they border. Not least due to the historical developments alluded to above, there is a substantial Hungarian minority in Transcarpathia, a Romanian/Moldovan minority in Northern Bukovina, and a large Russian minority in the Donbas area. These minorities play a role in shaping the relationship between Ukraine and its neighbours, particularly when minority 'kin-states' are involved. Thus, the particular demands and contributions of these minority groups and their relationship to the country across the border are of especial relevance to regions where these characteristics are present. As an example, many types of cooperation with Hungarian institutions are possible in Transcarpathia due to positive relations between Ukraine and Hungary, whereas such opportunities with Romania have been limited due to tensions in the Ukrainian-Romanian relationship over border questions and ownership of natural resources.

The fact that the regional situation is considerably more nuanced than is often believed is actually a positive feature and increases the probability that national politicians will pursue centrist positions, e.g. in foreign policy, in order to present themselves as representing the interests of the entire country. However, due to the lack of accountability of political actors, this centrism may be expressed primarily during election campaigns. During the presidential elections of 2010 the role of regional differences was reduced, primarily because of Yushchenko's failure in promoting his pro-Western policies. The consequence of this was that only a 'centrist' position (Tymoshenko) or a more 'eastern' position (Yanukovych) were an option, leading to less polarisation along regional lines in the candidates' rhetoric. Unfortunately, however, this is far from implying that the policy of the newly elected president will contribute to unifying the country, as the pursuit of narrow interests of particular political and economic groupings is likely to continue.

2.4. Pluralism in the information space

The state of pluralism in Ukraine is well reflected in its information space. Given that society in Ukraine is obviously heterogeneous in terms of predominant social mythology, perceptions of the history, regional identities, and geopolitical orientations, there is vociferous demand for the expression of a whole range of preferences. This leads to divergent outcomes. On the one hand, Ukrainian society has restricted any attempt to monopolise the 'truth' by those in power and owners of the major mass-media outlets. On the other hand, such a divided and segmented society is less capable of pushing for consistent reforms and policies on the basis of a strictly formulated identity and system of values. Moreover, there is still a dearth of stable institutional guarantees of media freedoms and their irreversibility. The natural social diversity of Ukraine is a basic element of its pluralism,

but insufficient to ensure the institutionalisation of the freedom of expression in the long term.

The media, particularly television, occupies a central role in the informational space. While its independence is still open to question in light of the fact that it is owned by big business, it is broadly free of the kind of governmental censorship which existed in pre-Orange Ukraine. The phenomenon of *'temniki'* – direct governmental instruction to media widely used by Presidential Administration in 2003-2004 – is largely forgotten. Nationwide television channels in most cases have provided balanced news coverage, while representatives of the ruling parties and those in the opposition have enjoyed equal access to the media. Citizens also enjoy wide-ranging pluralism in both electronic and print media. The growing importance of the internet in Ukraine is noteworthy. According to different data, the number of Internet users in Ukraine reached around 16% of the population by the end of 2009¹⁵. Because the internet is beyond the reach of business interests, it widens the circle of opinion-makers to include experts and active citizens who would not otherwise have access to the media.

Despite the above, the media is still the primary platform for political elites and big business interests, with little television time in particular made available for independent and critical journalism. Apart from a few prominent figures, civil society leaders have no influence on media content, which in general is driven by funding from the owners, not by market demand, i.e. advertisement fees. Investigative journalism, although having steadily developed since 2005¹⁶, has had little impact. Similarly, despite the plurality of opinions available in media on the national level, this is not the case at the regional and local level, where state administrations that own newspapers and TV channels tend to

¹⁵ See, for instance, GemiusAudience Research 2009 – <http://gemius.com.ua/ua/aktualnosc/2009-12-25/01> and GfK Ukraine – http://www.gfk.ua/public_relations/press/press_articles/005422/index.ua.html

¹⁶ The Bureau of Investigative Journalism 'Svidomo' is one of the examples of such an attempt. See <http://kiev.svidomo.org/about-buro.html>.

influence their editorial policy. Thus, Ukraine's press freedom record is mixed. According to the Reporters Without Borders' Press Freedom Index 2009, Ukraine was in 89-90th position among 175 countries of the world, with Albania (88) and Georgia (81) ahead, and Israel (93), Moldova (114) and Russia (153) behind¹⁷.

Thus, despite the progress there are increasing concerns that 'state censorship has been replaced by owner censorship,' as 'for most media owners the media are not a way of making a profit, but a means of creating favourable public opinion.'¹⁸ There is a view that the presidential election campaign of 2009-2010 has resulted in the revival of 'written-to-order' stories, designed to promote the positive image of the client and/or release negative and scandalous information about political competitors of clients (or owners). Evidence for this was provided by independent watchdogs, such as the Institute for Mass Information (IMI), which examined interference in and by the media in Ukraine during 2009. According to IMI monitoring of printed media, December 2009 broke records of sponsored stories in national press, with 72 such stories as compared to only 28 in July 2009¹⁹.

Moreover, since 2005 the lack of political will to establish public television (i.e. television funded by taxpayers and controlled by them, as is the case with the BBC, for example) has persisted. As a result, despite all the promises on this issue made by political leaders after 2004 and numerous efforts by civil society and international donors, public television still does not exist.

¹⁷ Press Freedom Index 2009, Reporters Without Borders web-site, <http://www.rsf.org/en-classement1003-2009.html>

¹⁸ Lange, Nico. Current State of Freedom of the Media in Ukraine. KAS Democracy Report. Konrad-Adenauer-Stiftung, 2008, p. 8.

¹⁹ Institute for Mass Information web-site http://eng.imi.org.ua//index.php?option=com_content&task=view&id=173575&Itemid=1

3. The low degree of consensus

Despite the above mentioned pluralism, Ukraine has so far failed to establish clear rules of the game and reach consensus on important objectives in terms of its state-building. Only some lower level consensus has been achieved, which has probably secured Ukraine's future as an independent and sovereign country. Yet, this is not enough to result in a coherent political nation. The fact that political elites still often choose to emphasise the divisive issues undermines national integrity.

Similarly, some consensus has been achieved in terms of the acceptance of democracy as the only 'game in town', at least in political rhetoric and programs in Ukraine. However, this is not necessarily because it is regarded as the most just and fair system. Rather, the sheer difficulty and almost futility of imposing a monopoly of power by one political force makes democracy almost unavoidable for Ukraine. Importantly, no mainstream political force in Ukraine advocates any alternative to, or variations of, democracy (for example, along the lines of 'managed' or 'sovereign' democracy), even though some references to 'a strong hand' appeared in the presidential campaign. So Ukraine, unlike Russia and some other CIS states, does not reject the common European value of democracy as such. Nobody in Ukraine says that democracy, civil society and freedoms are values imposed from abroad, as is the case in Russia.

Nevertheless, this entrenchment of democracy has not helped Ukrainian political elites to progress in terms of reforming the Constitution, which is widely seen as a set of ‘meta-rules’ of a political system²⁰, and in terms of ensuring the independence of the judiciary. No progress has been made since the Orange Revolution despite the rhetorical commitment of key political actors to resolve the deadlock on either of these issues. The absence of a level playing field and a deficient political culture has meant that Ukraine has been plagued by political infighting, short-termism, and inadequate government.

Weak civil society and low pressure for reform from within means that this is unlikely to change. In fact, the low level of national consensus is attributable to the low level of trust among different groups of society and a lack of initiative or interest in changing things at the local level. The limited ‘social capital’ of Ukraine along with the atomisation of society means that the political class is not accountable and there is a dearth of resource to build a national consensus.

Thus, pluralism alone is not enough. It might prevent a drift from the current concentration of power to greater authoritarianism, but without clear rules of the game, on which the political class would have to agree, and without social trust, it is not sufficient to produce national consensus. Without such a consensus the emergence of effective state institutions and much needed reforms remains elusive.

3.1. The lack of agreement on the rules of the game

Although there is an oft-voiced acceptance of democracy, there is no sense of preparedness to be constrained by rules, as expressed by Javier Solana in October 2002, who suggested that ‘Ukraine is not playing by the rules but playing with the rules.’²¹ The Orange Revolution

²⁰ von Beyme, K. 2001, ‘Institutional Engineering and Transition to Democracy’, in Zielonka, J. (ed.), *Democratic Consolidation in Eastern Europe. Volume 1. Institutional Engineering* (Oxford: Oxford University Press), p. 6.

²¹ *Ukrainiska Pravda*, 02.10.2002, <http://www2.pravda.com.ua/en/news/2002/10/16/2049.htm>

did not change that. While after the Orange Revolution power was no longer concentrated in one institution, i.e. the presidency, there is a continuous tendency to use rules, norms and institutions in an instrumental way. While democracy is indeed the only 'game in town', political competition is not constrained by, not anchored in, a set of strong and effective representative, administrative and judicial institutions. Stable and mature institutions that would enforce democratic standards in public life do not exist.

Since the Orange Revolution, the degeneration of the Ukrainian constitution into a array of conflicting and ill-defined rules has accelerated. The shortcomings of the institutional design were in evidence prior to the Orange Revolution. In particular, the design of the presidency, which was conceived as a hybrid between the figurehead 'head of state' and the chief executive was clearly flawed. The web of overlapping prerogatives of the president and the legislature provided for in the 1996 constitution allowed these institutions to expand and consolidate their respective spheres of authority between 1997-2003, with President Kuchma exploiting any gaps ruthlessly and unhesitatingly. And even though his presidency did not succeed in circumscribing the parliament in constitutional terms, its control of administrative 'resources' and arbitrary interpretations of the constitution meant that the presidency dominated other state institutions.

The constitutional amendment agreed as part of the intra-elite compromise during the Orange Revolution (and introduced in 2006), which paved the way to a re-run of the second round of elections, only exacerbated the confusion and overlap of powers. Nominally, the 2006 reform strengthened the system of checks and balances by weakening the presidency. However, it also further complicated the interactions between the branches of power both *within* the executive branch (between the President and Cabinet) and between the executive and legislature. The changes to the executive branch weakened the presidency and empowered the prime minister, which lead to intense competition

over control of the entire executive branch. So, while the president lost the power to appoint and dismiss the prime minister, it remains a powerful institution with important legislative and appointive powers. For example, the president chairs the National Security and Defence Council (NSDC), the decisions of which are binding for all organs within the executive branch. The presidency also has the right to appoint regional governors, who are otherwise subordinated to the Cabinet.

The constitutional inconsistencies on Presidential and Prime Ministerial prerogatives were exploited by President Viktor Yushchenko and Prime Minister Yulia Tymoshenko (2005, 2007-09) in their internecine struggle. This was best exemplified by the 'war of decrees', whereby in its first 100 days, the second government of Yulia Tymoshenko (2007-09) received 881 directives, instructions, and other written prescriptions from the President and his secretariat (the previous government of Viktor Yanukovich received 231 directives during the same period).²² The Law on the Cabinet of Ministers, which changed three times in 2008 alone, is an example of the political manipulation for the sake of partisan interests, such as attempts to further weaken the President as an institution and as a political leader.

The tensions between the President and Prime Minister during the Orange period (2005, 2007-09) were not the only consequence of constitutional imperfections. The flaws include weak links between individual members of parliament and political parties, something exacerbated by the revival of the so-called imperative mandate, which prevents members of the parliament from leaving the parties on whose lists they were elected to the parliament. The imperative mandate has been so unsuited to the political realities of Ukraine that it has been violated and disregarded thereby reinforcing the tendency to 'play *with* the rules'. This practice launched back in early 2007, when the Cabinet and coalition led by Viktor Yanukovich tried to strengthen his parlia-

²² *Dzerkalo Tyzhnya*, №. 12(691), 29 March–5 April 2000, <http://www.mw.ua/1000/1550/62561/>

mentary majority by recruiting individual MPs without them withdrawing from their original factions. As a result, some opposition MPs kept formal links with their factions, but in practice supported the ruling coalition with their votes.

Some deputies violated the rule by moving to another faction. But even when deputies stayed in the factions to which they were elected, they voted in contradiction to their factions (as was the case with some deputies from the bloc of Yulia Tymoshenko in the aftermath of Yanukovich's victory in the presidency in 2010). This renders the whole notion of factions and coalitions of factions hollow. The functioning of the Ukrainian parliament indicates that providing constitutional norms is necessary but not sufficient to ensure self-restraint on the part of the political class when it is required to function without other 'disciplining mechanisms', such as fully-fledged political parties or appropriate legal measures in place.

Constitutional confusion means that the 'rules of the game' end up being contested on a daily basis by self-serving elites according to their immediate interests, creating uncertainty and instability. The highly instrumental attitude to norms and institutions prevails amongst the political class of Ukraine. While the major political forces claim to favour constitutional reforms, they failed to achieve any consensus on the way forward. The constitutional drafts more often than not reflect the intention of those who proposed them often in pursuit of improvements to their own political standing. Moreover, this political struggle spills over into other institutions, which leads to their politicisation and/or paralysis.

The most conspicuous victim of this spillover was the Constitutional Court. As in many other post-communist states, in Ukraine the Constitutional Court was conceived as a powerful institution in the 1996 Constitution. Yet, the power of the Ukrainian Constitutional Court has proved to be a double-edge sword: while it was granted the power to deliver a final resolution in disputes between state institutions, the ill-conceived design of the constitutional framework led to the flooding of the Con-

stitutional Court (CC) with cases about institutional prerogatives. At least initially, the Court tried to seek out the middle ground. By the second term of Kuchma's presidency (1999-2004) its rulings began to bear more clear signs of concession to political expediency. The Court, which already enjoyed little prestige due to its perceived subservience to politicians and suspicion of corruption among its members, was significantly discredited in 2007. During the tug-of-war between Prime Minister Viktor Yanukovich, and President Viktor Yushchenko, the actions of the latter, rendered the Court incapable of fulfilling its mandate of constitutional adjudication. The president, owing to his right to appoint 1/3 of CC judges, withdrew some of them without appointing new ones, thereby preventing it from being quorate. The standing of the CC was further damaged in the aftermath of the presidential elections in February 2010 owing to its politically expedient ruling on the parliament coalition.

However, the politicisation and/or paralysis of state institutions since the Orange Revolution has not affected all institutions to the same degree. Some institutions, like the National Bank of Ukraine (NBU), have managed to retain some degree of independence, despite pressure from political bodies. As the NBU Council is appointed jointly by the President and the parliament, there are opportunities for political influence. However, the main issue is that qualification criteria for the members of the Council are somewhat questionable making the Council less professional and thus more prone to political influence, especially as its decision-making is not transparent.

The focus on ongoing political struggles and contestations of prerogatives during the Orange period took attention away from the reform process. As a rule, sustained reforms require political consensus and a sequence of legislative and implementation measures. The paralysis of the parliament reduced legislative functioning to a minimum. This has had profound consequences for Ukraine's ability to deal with the economic crisis and to embark on and sustain structural reforms.

The ill-defined and overlapping constitutional powers encourage politicians to misuse the judiciary to outmanoeuvre their opponents. The Ukrainian judiciary therefore is both a victim and perpetrator of the '*playing-with-the-rules*' culture. As it is so embroiled in the adjudication of political disputes, the judicial branch has degenerated into an arena for playing out political conflicts. Over a period of days in May 2007, various common courts, acting under pressure from the President and Prime Minister, passed a total 12 judgements, 6 of which approved the suspension and 6 ordered the cancellation of the suspension of the Constitutional Court judges by presidential decrees.

Thus, the independence of the judiciary is grossly compromised. The judiciary remains a hierarchal bureaucracy where higher courts give instructions to lower courts, leaving little independence to individual judges. It suffers from: a low level of public trust, an inability to offer adequate judicial protection, extensive corruption, overlong judicial proceedings, ineffective procedures of judicial examination, revision and execution of court rulings, inadequate professionalisation of judges, non-transparent selection and appointment processes and unclear delineation of judicial responsibility. A change to this *status quo* would require the sustained implementation of wide-ranging measures, ranging from training, appointing and recruiting judges to ensuring the financial autonomy of the courts.

Overall, while politicians continue to 'play with the rules', Ukraine suffers from the inefficiency and unaccountability of public administration, rampant corruption, weak property rights and the ineffectiveness of the judicial system. The persistence of corruption and ineffectiveness of state institutions in Ukraine constitutes the key failure of the Orange Revolution and remains the gravest challenge for Ukraine. More often than not, the existing 'checks and balances' result from state institutions being captured and controlled by competitive political forces, rather than their capacity to exercise their institutional prerogatives in an independent and transparent way.

3.2. Low quality political and business elites

Apart from the inherited weakness of institutions, the lack of tradition of statehood meant that an independent Ukraine lacked a political class schooled in traditions of public interest, prepared to assume responsibility for helping address the country's needs. Indeed, the extent to which current political elites comprehend and respect the principles of 'commitment', 'public duty', 'credibility' and 'trustworthiness' is highly questionable. Swathes of them seek to maximise their short term political advantages at the expense of the state and nation. While such elite behaviours may be a by-product of the anomalous domestic rules of the games, they generate endless political games, unstable pacts and shifting alliances. The single-minded and self-centred pursuit of power, as well as creating uncertainty in the absence of rules of the game, dictate time horizons which are too short to embark on comprehensive and much needed reform of the state and economy.

This results in an absence of governance, something which became particularly evident after the increased pluralism engendered by the Orange Revolution which exposed many previously hidden issues. For example, parliament was practically inactive for much of 2007 due to the painful process of coalition-building, after President Yushchenko's decree to dismiss it, thereby triggering early elections in September 2007 and the formation of the new coalition only in December 2007; there were a number of other, shorter periods when the opposition sided with different factions on various occasions.

The net result was that Ukraine failed to carry out much needed reforms. Constitutional reform, although a top priority for Ukraine, has not been implemented. The judiciary remained a hostage to political interests and a tool in the political struggle. Both reforms require the vision of, and commitment to, the long-term future of the country, something that is in short supply amongst the political class in Ukraine which lacks the self-restraint and commitment to obey the rules if they run against their interests.

Domestic infighting has tended to spill over into the international political arena. Internal instability prevents Ukraine from being able to deliver on external commitments and pledges thereby undermining Ukraine's international image and credibility. In addition, politicians deliberately use external fora to score points against domestic opponents. Tymoshenko's critique of Yushchenko in the capitals of Europe in 2006, which bewildered European elites unfamiliar with the situation in Ukraine, damaged the image of Ukraine as a whole.

The bungled international privatisation of the Odessa Portside Plant, Ukraine's second largest producer of ammonia²³, illustrates the relationship between domestic instability and the extent to which it inflicts damage to the country's credibility. The privatisation process was delayed, protracted, unpredictable and ultimately cancelled in September 2009. The inter-executive conflict and personal animosities between Yushchenko and Tymoshenko marred the process while the opaque links between business and political structures were made explicit. The reputation and international standing of Ukraine has become a hostage to the political struggle over economic resources within Ukraine.

Ukraine's international credibility also suffered as a result of the two serious energy crises in the winters of 2005-2006 and 2008-2009 when several European countries were left without gas. Although ostensibly Russia provoked these events by cutting gas supplies, Ukraine contributed due to its inability to introduce transparency to its energy relations with Russia and to its domestic energy market. Indeed in 2006 Ukraine allowed the intermediary monopolist company Rosukrenergo to appear on its market, which made large profits from the difference in price of gas exported from Russia and imported to Ukraine without delivering any benefits to Ukraine's state budget²⁴.

²³ <http://file.liga.net/company/127.html>

²⁴ The company was registered in Switzerland in the famous canton of Zug and thus free of taxes in Ukraine.

The lack of transparency in the Ukrainian gas market and its energy relationship with Russia makes Ukraine a weak negotiating partner, while deeply vested interests inside the political class hamper reforms demanded by the EU further damaging Ukraine's international credibility. Thus, in 2009, Ukraine managed to secure a long-term contract with Russia²⁵; yet its provisions disproportionately favour the interests of Russia against those of Ukraine. For example, Ukraine committed itself to purchase much more gas than it actually could consume, especially once the economic crises really started to bite leading to drastically decreased industrial production and therefore gas consumption. The commitment was based on the 'take-or-pay' principle exposing Ukraine to a permanent threat in the event of under-consumption. This principle was not mirrored in the transit agreement, thus imposing no reciprocal penalty on Russia. Where the EU is concerned, Ukraine has so far failed to follow up on the commitments it took in March 2009, when the EU agreed to support the reform of Ukraine's energy sector and offered, together with international financial institutions, support to modernise Ukraine's energy sector²⁶. It remains to be seen whether Ukraine will be able to meet these requirements, which are also in line with the requirements Ukraine has to meet to become a full-fledged member of the European Energy Community.

The inability of political elites to think in terms of national interests is also reflected in their exploitation of the regional diversity of Ukraine. Thus, the political elites, although defenders of the national integrity of Ukraine, in practice undermine it by reinforcing the east-west stereotypes in a variety of ways. The regional diversity of Ukraine, which could be otherwise viewed as an opportunity, thus becomes a hostage to short-term political struggles. For example, debates on

²⁵ The agreement between the Ukrainian Naftogas and Russia Gazprom was signed on 19 January, 2009.

²⁶ Memorandum of understanding in the energy sector between the EU and Ukraine, as well as the Brussels March 2009 Declaration require reforms. In addition to that certain requirements are specified within the ENPI direct budgetary support scheme.

the language issue can be seen as an attempt to focus on cleavages in pursuit of political gain. Since most Russian-speakers are in the east, and most Ukrainian-speakers in the west, the politicisation of the language issue (by calling into question the further expansion of the role of Ukrainian within the educational system or by promoting the idea of granting Russian the status of second state language) tends to have a polarising effect. The fact that numerous politicians utilise such issues during election campaigns and then fail to follow through with their promises would suggest that 1) their motivation in raising these questions was primarily to obtain votes and 2) they are aware of the polarising effects of such issues and therefore shy away from tackling them after being elected.

A second way in which politicians exacerbate regional differences is by saying one thing in one area of the country and something else in another. Instead of coming up with unifying issues which are or could be of relevance irrespective of geography, candidates tailor their statements to suit their respective 'eastern' or 'western' audiences. Often their rhetoric draws on the image of a divided Ukraine and strengthens this stereotype rather than attempting to overcome it. This phenomenon is particularly evident during national election campaigns.²⁷ While it is understandable to address issues, which particularly affect those people who are listening, changes in rhetoric often imply that the candidate has one programme in the east and another in the west, or worse, has none at all and therefore can change tack at will. This pattern of shifting rhetoric is underlined by the switch from using the Russian language to Ukrainian, depending on the region involved.

Due to the lack of genuine ideological differences among the candidates, it is difficult to identify credible overarching themes in their programmes or activities, which result in substantive outcomes in the

²⁷ Wilfried Jilge. 2007. Gespalten in Ost und West? Sprachenfrage und Geschichtspolitik in der Ukraine im Kontext der Wahlkämpfe 2004 und 2006, *Ukraine-Analysen* 19/07, 13.02.2007, pp. 18-22, <http://www.laender-analysen.de/ukraine/pdf/UkraineAnalysen19.pdf>.

policy realm. Such themes could work to unify the populace across regions, or even to create cross-cutting cleavages, making region (and the related parameter of language) less salient. However, the absence of these themes (and policy related to them), combined with the behaviours described above, has in past years resulted in an overemphasis of regional differences rather than an attempt to overcome them through the promotion of policy with the potential to serve a unifying function.

The suspect quality of the Ukrainian political elite is likely to be attributable to its close ties with large business interests. Academic literature conceptualises such a political system as a 'patrimonial system'²⁸ where the state is captured or even privatised by several ruling economic clans. During Kuchma's presidency, these groups were balanced against each other by his administration, particularly through its strong control over parliament and especially its members who were elected on a majoritarian basis²⁹.

Yet, when in the 2006 parliamentary elections, candidates were elected based on party lists only, key economic interests managed to secure their presence in parliament by purchasing places in party lists. Voters had no say in terms of composition of those lists, which would not be the case if the party lists were open. The bitter joke that Ukrainian parties are the 'trade unions of oligarchs' has a hint of truth in it. As a result, the majority of legislation results from non-transparent economic lobbying and corporate interests and tends to have little to do with reform. Apparently, Ukrainian oligarchs prefer securing their business interests via party lists rather than via reforming the judiciary and ensuring its independence. They push for stability at critical mo-

²⁸ See Wallander, S. 2007, Russian Transimperialism and Its Implications, *The Washington Quarterly* 30(2), pp. 107-122, where this term is applied to Russia.

²⁹ According to the electoral system before the 2006 parliamentary elections 50% of MPs were elected according to the party lists and 50% of the MPs based on the majoritarian system. Lack of party responsibility made these MPs rather flexible where voting is concerned.

ments, but then create instability and undermine legitimate democratic processes when it suits them. Similarly, they push through some reform measures, but only those, which reflect their more immediate business concerns rather than comprehensive reform of the state. From this perspective Ukrainian political elites are a cause of the problem as much as they are a solution. The status quo which favours narrow corporate interests is something, which is unlikely to change in the immediate future.

Related to the above, is the lack of ideology of the political elites. Political parties that promote the interests of their sponsors do not have a strong societal base and tend not to reflect any societal cleavages at all. Political pluralism in Ukraine is hardly genuine political competition. Although this kind of pluralism is a mechanism of safeguarding the transparency of the political process and avoiding any concentration of political power, it has no 'competitive substance'³⁰. As a result electoral campaigns resemble the promotion of commercial brands: millions of dollars are invested in political technologists and advertisements using emotive slogans which lack substance. Interestingly, Ukrainian MPs from competing parliamentary factions in the Ukrainian parliament are members of the same factions in the Parliamentary Assembly of the Council of Europe.

In addition, political actors in Ukraine operate in a highly uncertain environment. Tactical alliances are created and break up quickly according to the opportunities available, as was the case with the Yushchenko-Yanukovich alliance, created in August 2006 and which ended in March 2007, when Yanukovich's Party of Regions attempted to surreptitiously create a constitutional majority in the parliament, something which panicked the president. Similarly, the agreement between Tymoshenko and Yanukovich aimed at revising the Constitution was not implemented as Yanukovich suddenly announced he was out of

³⁰ Millard, F. 2004, *Elections, Parties, and Representation in Post-Communist Europe* (Palgrave Macmillan), p. 71.

the game. In Ukraine, allies are not to be trusted and alliances can be best understood using the famous ‘prisoners dilemma’, in which the most effective strategy for both parties who do not trust one another is to adopt the short term, self-serving and self-preserving option. Needless to say, this precludes long-term strategic cooperation.

Zero-sum thinking – that is, that power has to be absolute – is characteristic of Ukrainian political elites and a relic of Soviet times. The transition from presidential to semi-presidential system was supposed to eliminate this zero-sum, winner-takes-all approach but failed to do so.

It was only two years after the Orange Revolution that a true opposition started to form. A shadow Cabinet of Ministers was formed for the first time in Ukraine after Tymoshenko became prime minister in December 2007 and Yanukovich was forced into opposition. The shadow Cabinet was not very active as an institution and did not offer any substantive alternative agenda, yet this formal and rhetorical innovation was a step in the direction of an opposition starting to have political influence.

The electoral campaigns for the presidential election of 2010 were indicative of the lack of systematic and feasible ideas on getting the country out of its political and economic crisis. None of the frontrunners in the contest, including Viktor Yanukovich, Yulia Tymoshenko, Serhiy Tyhipko, and Arseniy Yatseniuk presented a clear reform program. It is difficult to discern to what extent or the means with which they would pursue key structural reforms of the state. Moreover, all the front-runners were in many ways part of the system and as such never challenged it. Yet, more problematic is the fact that no new political elites are on the horizon. Although certain candidates in the race appeared to be relatively independent from the system (read: business interests), Anatoliy Hrytsenko being one of those, they still lack a political base and popular support as exemplified by their very poor showing in the first round.

3.3. No consensus on reforms

Over the five years following the Orange Revolution, despite useful and pointed advice from Ukrainian think tanks and Western advisors and institutions, Ukraine has failed to implement many vital reforms. While inadequately functioning institutions and the low standards of the political class are factors, the inability of society to exert significant pressure for change has also contributed. Overall, it would appear that the lack of reform and continued ambivalence of society either benefits the political class and/or is preferable to the costs incurred by reform.

Constitutional reform, although constantly discussed and recognised as essential by all political players has not taken place. President Yushchenko established the National Constitutional Council in November 2006, yet instead of nominating independent and impartial experts to become its members, the Commission was mostly made up of politicians. The two largest factions in the Verkhovna Rada – BYT (the Bloc of Yulia Tymoshenko) and the Party of Regions – did not join the Council and opted for an alternative arrangement. In April 2008 the Rada established the Commission on the Constitution, which was supposed to propose its vision of the Constitution. While models of suitable constitutions for countries such as Ukraine are available and recommended both by the Council of Europe and independent Ukrainian experts, the major political players in Ukraine failed to reach a consensus and could not agree to leave reform to independent experts.

The reform of the court system has also been afflicted by problems. Creating a well-functioning judiciary, capable of enforcing the rule of law, is one of the most difficult challenges not only for Ukraine, but for all post-Soviet countries. Even though some reforms have been initiated, including approving the ‘Concept of the Reform of the Judiciary System’ and the implementation plan approved, they have yet to deliver results. However, as in so many areas, progress has been hampered by poor coordination between the President, the Cabinet and the parliament due to institutional competition and re-occurring political stale-

mates. As a result no further legislation to implement the Concept has been adopted, while the bill on judiciary reform developed by civil society experts has been consistently blocked in the Rada.

Similarly little has been achieved with regard to administrative reform and the need to raise the standards of the work of the civil service from its current low levels of inefficiency and high levels of corruption. As one analyst noted:

‘They are state functionaries still largely schooled in the habits of Soviet bureaucracy, notably servility, rigid adherence to the most petty regulations, lack of regard for the opinions and feelings of subordinates, complete dependence on instructions, the incapacity to make decisions independently and a total lack of interest in the effect of their actions on ordinary citizens.’³¹

While comprehensive administrative reform has yet to take place (for example, the ‘Law on the Civil Service’ has yet to be passed), even interim measures to address the problems have failed to improve the situation. The administrative structures and competencies remain blurred and often overlap. Political and administrative levels are not clearly separated, meaning that positions are subject to negotiation and trade off following every election. There is an ongoing operational review carried out within the central executive organs to detect inconsistencies in the division of competencies and eliminate them. However, it stops short of a comprehensive overhaul of the system. Streamlining central government requires a reduction in the number of organs of state authority, something which is and will be vehemently opposed by these very same organs. It also requires a separation of executive and control functions, which are currently often performed by the same institutions.

³¹ Sherr, J. 2007. Ukraine’s Security: the Interplay of Internal & External Factors, *Quid Ukraine’s Strategic Security?*, ESF Working Paper, No,24 (January 2007), p.18.

The lack of success in fighting corruption is a persistent problem in Ukraine. Despite large-scale international projects with well-developed recommendations and specific plans of action, no progress has been made in adopting the needed legislation and taking institutional measures, such as setting up an independent anti-corruption authority³².

Electoral reform, which would open party lists and divide the single national electoral constituency into several regional constituencies, aimed at overcoming the gap between the political class and citizens has not taken place either. The electoral system underwent a change from the majoritarian system to a mixed system in 2002 and then to a proportional system in 2006, at national, regional and local levels. The current system with one electoral constituency for a country of 46 million residents and closed party lists means that members of the Verkhovna Rada are essentially unaccountable to their constituencies and voters at large. In fact, MPs and members of the local councils get elected purely as the result of intra-party bargaining (often based on financial contributions) without any direct voter involvement. Many key political actors have highlighted the problem, yet no steps have been undertaken to find a solution. Moreover, a popular (or even populist) idea of returning to a majoritarian system has been mooted. Most experts currently favour introducing a proportional preferential voting system (open lists) in elections to Parliament, regional and big-city councils, but a majoritarian system in multi-mandate constituencies in the elections of local councillors. Moreover, run-off voting in mayoral elections has consistently been discussed, especially that the mayor of Kyiv was elected by only 37% of voters. Yet, despite his low popularity, particularistic and influential interests have managed to resist change.

The social system has also remained largely unreformed with only limited change implemented. Pension reform – one of the cornerstones

³² For relevant recommendations see Joint First and Second Evaluation Rounds, Evaluation Report on Ukraine, adopted by GRECO at its 32nd Plenary Meeting in Strasbourg, 19–23 March 2007: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/Greco-Eval1-2\(2006\)2_Ukraine_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/Greco-Eval1-2(2006)2_Ukraine_EN.pdf).

of reform of the social system reform – was launched in 2003 but quickly reversed. The aim was to put the pension system onto a sustainable financial footing in light of Ukraine’s rapid depopulation and ageing population. The first tier – the pay-as-you-go-system (PAYG) – was complemented with an individually funded mandatory second pillar and a voluntary (private) third pillar outside the state pension system. The third pillar went into operation in 2005 with limited success as it required a full-fledged operating stock market and a high degree of trust in the financial institutions of the country³³. The introduction of the second pillar has been postponed several times due to ongoing imbalances in the current PAYG system, triggered by authorised increases in pensions that overrule the pension payment formula, an unbalanced contribution base (only about half the employed population contribute the requisite 35.2% of gross salary) and the very early retirement age for females, particularly when taking into account their life expectancy. Cumulatively, this has destabilised the Pension Fund budget which in 2009 had a deficit of 18 billion Ukrainian hryvnya.³⁴ In late 2009 the Cabinet of Ministers passed the Concept of Successive Pension Reform Implementation, rescheduling the introduction of the second pillar to after 2013³⁵. However, as the Concept fails to address key imbalances, its successful implementation remains is doubtful.

Other changes to the social system are also required. The high social contribution of about 50% of gross salary (including the pension contribution at 35.2% of gross salary) explains the very limited success of personal income tax reform (2003) in salary and employment de-shadowing, i.e. movement of employment out of a shadow economy. According to Doing Business 2010³⁶, labour taxes and contributions in

³³ Handrich L., Betliy O. ‘The pension system derailed: Proposals how to get back on the reform track’ Policy Paper V9, May 2006. – www.ier.kiev.ua

³⁴ According to the Secretariat of the President in 2009

³⁵ Resolution of the Cabinet of Ministers of Ukraine ‘On approval of the Concept of Successive Pension Reform Implementation’ No. 1224-p, October 14, 2009

³⁶ <http://www.doingbusiness.org/explore/economies/?economyid=194>

Ukraine are approximately twice as high as in other countries of Eastern Europe and Central Asia. Moreover, in-kind privileges, like free municipal transportation for some pensioners, and privileges reserved for the professions are abundant.³⁷ As a result, the system fails to deliver aid to the needy despite the huge fiscal resources spent.

Fiscal reform is another pressing need, especially in light of Ukraine's fiscal deficit increase in 2009, surging state debt. The adoption of the Budget Code in 2001 was an important step forward, but further reforms stalled. The implementation of a medium-term expenditure framework aimed at ensuring state commitment to longer-term initiatives, fiscal decentralisation aimed at shifting fiscal rights and responsibilities to local levels, and higher fiscal transparency are all tasks that have yet to be undertaken. The failure to implement fiscal reforms has resulted in regular bickering over annual budgets, which in turn undermines macroeconomic stability and ultimately people's welfare.

At the same time, the reform has to be sufficiently comprehensive as partial reform could undermine its effectiveness. In 2009, the draft Budget Law for 2010 envisaged direct fiscal transfers from the state budget to all local budgets including budgets' of urban villages and villages increasing the number of direct recipients from 700 units currently to more than 12000. The manageability and efficiency of such innovation is highly questionable. This reform would have much more sense if long-awaited administrative and territorial reforms had been completed and small regional units consolidated. It remains to be seen whether this system will be preserved in the 2010 Budget Law still to be passed.

To stimulate the stable economic development of Ukraine, further business-climate-oriented reforms are necessary. Reform to simplify market entrance and exit, bankruptcy procedures, property right confirmation and protection, including intellectual property rights protection, the permit system, technical regulations, and tax administration

³⁷ Handrich L., Bettiy O. 'Principles and methods of targeted social assistance: Policy recommendations for Ukraine' Policy Paper 07/2008, October 2008. – www.ier.kiev.ua

are all desperately needed. In *Doing Business 2010*³⁸, Ukraine is ranked 142 out of 183 countries for dealing with construction permits and paying taxes. Starting a business takes approximately 10 days longer and costs 2.5% of income per capita more than in other countries of Eastern Europe and Central Asia, while closing business is three times costlier. Tax payments take twice as long and take a larger share of the profits.

Ukraine needs to ensure a more favourable business and investment environment. According to the Heritage Foundation's Index of Economic Freedom Ukraine is ranked 162nd out of 179 countries worldwide and regionally, 43rd out of 43 European countries owing to its low property right protection, weak judicial system, high corruption, and poor contract enforcement³⁹. Better regulations need to be developed to stimulate investment in innovative and energy-efficient projects. Moreover, the privatisation process has yet to be completed. Several cases of re-privatisation motivated by non-transparent privatisation procedures have created uncertainties diverting potential investors. Largely inefficient natural monopolies have yet to be reformed.

The close relationship between business and politics, as well as a lack of political leadership and strategic thinking in Ukraine has led to a lack of relevant reforms. In many ways Ukraine lacks a strategic vision, shared by society and political elites alike. Membership of the EU could become such a unifying vision, as it would provide a tangible goal and clear steps reinforced with targeted external assistance. Yet, due to years of rhetoric, European integration is not supported by a clear reform plan and a clear external signal, namely the prospect of membership offered by the EU.

³⁸ <http://www.doingbusiness.org/exploreconomies/?economyid=194>

³⁹ See, for instance, Index of Economic Freedom <http://www.heritage.org/index/Ranking.aspx>.

3.4. Elites and society – never the twain shall meet?

Political elites and society in general exist in parallel in Ukraine. Public opinion matters only before elections and therefore large amounts of money are invested in election campaigns, but not in policies and reforms, as the latter tend not to confer benefits in the short-run. Although on the surface political actors in Ukraine seem to be more open than before – Ukrainians can follow live and uncensored debates between political opponents on television. In fact these debates are often merely staged performances, whereas important policy choices or real politics take place behind closed doors.

To a large extent political elites in Ukraine have ‘privatised’ the state as an institution. They rule the country but are not accountable to society. Access to power and decision-making provides enormous rent-seeking opportunities, starting with law-making, which is driven by narrow corporate interests and ending with corruption at all possible levels. The patrimonial system model, as pointed out in Chapter 3.2., helps to explain why many sectors of policy-making in Ukraine do not deliver. The system is organised so that the primary relationship is between patron and client, which is used to create, access, and distribute rents⁴⁰. The public procurement system, which offers enormous corruption opportunities, yet is supported by nearly all political parties, is a vivid example of how public funds are misused on a large scale. The public procurement legislation was not reformed during the period following the Orange Revolution; moreover the new bill appears to offer new corruption opportunities and was voted for in the week after the run-off of the 2010 Presidential elections with MPs from the Party of Regions, BYT, Our Ukraine and others supporting the bill⁴¹.

This alienation of political elite(s) from society is due not only to the poor quality of elites, as discussed above, but also society itself, which

⁴⁰ See again Wallander, S. 2007, Russian Transimperialism and Its Implications, *The Washington Quarterly* 30(2), pp. 107-122.

⁴¹ See Marusov, A. 2010, ‘Tendernyi PRiBYT’, *Dzerkalo Tyzhnia* 5(785), 13-19 March 2010. <http://www.dt.ua/1000/1550/68512/>

tolerates corruption, does not demand accountability and justice and is not prepared to mobilise, and create a bottom-up movement to exercise pressure on the political class. While politicians might tend to be opportunistic, ready to exploit their power, in western democracies where there is a strong tradition of accountability, political elites simply cannot abuse their position to this extent, since society will just not stand for it (smaller scale abuses in these countries are deemed corruption scandals). In Ukraine politicians have much more freedom of action and misuse, because society is much less able or willing to vocalise its concerns. Paradoxically although a majority of the population does not trust political elites, it does not believe it can change things and therefore prefers to stay away from politics and civil society activities. According to public opinion polls conducted by the Razumkov Centre, more than 76% of those polled confirmed they are not involved into civil society activities⁴², while more than 60% of those polled revealed that they believe that they have no impact on authorities (both central and local)⁴³ Political elites, therefore, do not feel constrained by public opinion and are clearly not averse to using public resources for private benefits.

Where do these two parallel realities come together and interact beyond the electoral process? Can civil society as the *avant-garde* of society-at-large have an impact on decision-making or at least offer local solutions despite the fact that the state does not deliver services?

Any impact is limited by two factors. Firstly, no impact is possible if it is seen as endangering the current patrimonial system. When the Civic Assembly of Ukraine, a national civil society platform with delegates from different regions, developed proposals for reform of the Constitution of Ukraine, no politicians were prepared to even appear at the event where the proposals were presented. The Council of Europe's Venice Commission and the Parliamentary Assembly of the Council of

⁴² The poll was carried out in June 2008. See http://www.razumkov.org.ua/ukr/poll.php?poll_id=367

⁴³ The poll was carried out in March 2009. See http://www.razumkov.org.ua/ukr/poll.php?poll_id=441

Europe also offered very specific reform proposals, which were never taken on board by the members of parliament.

Reform of the Constitution, the judiciary and election legislation, as well as energy transparency, as described above, are all areas, where the deeply vested interests of the elites will not allow civil society to have any say or influence.

The second factor is the weak link between civil society and society in general. The majority of people do not trust non-governmental organisations and do not organise themselves in order to influence policy, or indeed to even provide better quality services for themselves. For instance, the number of unions of co-owners, groups of people who live in the same locality (or even in the same block of apartments) and who have organised better quality utility services for themselves is very small. The media in Ukraine tends not to make people aware of their rights and opportunities, as it is largely driven by commercial considerations. It is therefore hardly surprising that under such circumstances civil society is unable to organise itself and demand better services and better political elites. Indeed, as public opinions surveys show, little more than 20% of citizens in Ukraine trust non-governmental organisations, a situation that has not changed since the early 1990s⁴⁴.

Yet, civil society does influence issues of low-politics or those where the elites do not recognise their interest. Thus, there are opportunities for civil society to have impact on decision-making where no parliamentary involvement is needed, but decisions can be taken by the executive, mostly at the bureaucracy and procedural level. Where political leadership is available on certain issues, which happens rarely, civil society can push for more. For instance, Vice-prime minister for European integration Hryhoriy Nemyria has been instrumental in fast streaming some decisions and overcoming inter-ministerial tensions. Civil society experts have been involved on many occasions to devel-

⁴⁴ Data as of October 2009. Razumkov Centre public opinion poll. http://www.razumkov.org.ua/ukr/poll.php?poll_id=81.

op proposals which have been taken on board, such as that to adopt a policy of awareness-raising of European integration. Similarly, the Ministry of regional development under the leadership of Mykola Tkachuk adopted a national concept of administrative-territorial reform, which was proposed by civil society experts. Yet, implementation of these steps often requires follow-up legislative measures (at the level of the Rada), where the proposals usually come to a halt. Also, civil society helped develop the system of independent high school graduation testing in 2007, which helped to significantly diminish corruption in education. These examples are the exception rather than the norm.

Does society, specifically civil society, in any way put limits on the activities of the political elites? This question needs an answer in the context of the debate on the implications of what a strong presidency might bring to Ukraine. The presidency of Yanukovich will provide the answer to this question. However, there is some evidence that it might. When information about a Tymoshenko-Yanukovich deal, known as PRiBYT (Party of Regions and Yulia Tymoshenko Block) on constitutional revisions in April 2009 leaked into the media, a ferocious debate ensued. Eventually, Yanukovich abandoned the agreement, apparently having taken into account public reaction.

4. A lack of strategic vision

The informational space in Ukraine reflects the wide variety of perceptions, identities, myths, values and stereotypes spread across the country. However, key debates revolve around Ukraine's place in the world, and as such reflect either Ukraine's European orientation or its borderland or 'bridge-like' status. Is 'Europe' the same as the 'West'? Has Ukraine enough grounds to consider itself a part of Europe (or should that read, of the West)? Is 'Greater Russia' or the so called *Rusски Mir* ('the Russian World'), repeatedly proposed by Russian ideologists, an integral part of Europe or is it a separate entity? If it is separate, what are its most attractive features? If Ukraine opts for the Europeanisation model of transformation will the West be ready to accept Ukraine as its integral part in some point in the future? These conceptual questions (and their respective answers) in some way shape the domestic intellectual and information space, dividing it into several well identified segments, such as 'Westerners', 'Russophiles', 'Nationalists', 'Isolationists', 'Skeptics' and some others.

For the kinds of reasons outlined in this report, Ukraine lacks a consolidated version of its place in the world. With question marks hanging over the Europeaness of its identity, allied to an increased reluctance on the part of large swathes of its population to be characterised by the subordinacy implied in its status as part of Russia's 'near abroad',

Ukraine finds itself between two blocs unable to turn decisively one way or the other. The above is compounded by the fact that the international actors, other than Russian, lack a vision for and of Ukraine.

According to various public opinion polls, a large proportion of Ukrainians prefers integration with the EU and integration with Russia, Belarus and Kazakhstan, something the EU *acquis* does not allow. The fact that the two alternatives co-exist peacefully reflects the fact that, in Wilson's words, 'there is a 'conscious Ukrainian' minority and an even smaller minority of 'conscious Russians', and a large mixed-identity 'swamp' in between'⁴⁵.

This ambiguity in public opinion and identity is reflected in ambiguous foreign policy. Yet this indeterminate stance in the foreign arena is indicative of the short-term interests of the political class, who skilfully exploit the ambiguity of public opinion in order to get the most from either Russia or the EU for their corporate benefit, even at the expense of the national interest.

4.1. The growing security challenges

Ukraine is a country living in a highly dynamic and heterogeneous region where different approaches to regional security, stability, international rules and principles are pursued. That provides for insufficient internal accord about Ukraine's identity and fundamental national interests that could form the basis for comprehensive and non-controversial policies. The largely unfavourable international environment is a real challenge: Ukraine's geographic location has placed it within range of powerful geostrategic forces and competition.

The multipolar context within which Ukraine finds itself, will only become a threat to its existence if any one of the poles was to seek a greater degree of influence and control over Ukraine's political and

⁴⁵ Wilson, A. (2005), *Virtual Politics. Faking Democracy in the Post-Soviet World* (New Haven and London: Yale University Press), p. 42.

economic processes than hitherto. A further concern is the fact that international law is increasingly threatening to undermine the system of international guarantees of the country's territorial integrity and inviolability.

Membership of the UN, OSCE, Council of Europe, or its partner relations with NATO and the EU, or its periodic moments of harmony with Russia offer little protection to its national security. The guarantees that Ukraine received when it rejected its nuclear weapons in 1994 were never institutionalized and are ineffective.

Particularly since 2008⁴⁶ the Russian Federation has been seeking to revise the current European Security arrangements, culminating into the 'European Security Treaty' proposal in November 2009⁴⁷. The proposal is an attempt by Russia to institutionalise its 'spheres of privileged interest' with Ukraine as a key component. Needless to say, this would impinge on Ukraine's attempt to become a fully-fledged European country.

At the same time, the EU-driven Eastern Partnership (see Chapter 4.2), despite its obvious potential (i.e. the offer of a free trade area, assistance to reforms etc), does not constitute a long-term vision for this part of Europe (unlike, for instance, Western Balkans, where the EU is pursuing a clear integrative policy).

The Obama Administration approaches the region in terms of what they can do together with Eastern Europe (including Ukraine) rather than what they can do for Eastern Europe.

At the 2008 NATO Bucharest summit Ukraine obtained a political promise of future membership, although two years later that perspective remains distant owing to the lack of consistency in Ukraine, and

⁴⁶ In June 2008 President Medvedev made a speech in Berlin where he proposed the all-European security pact with Russia's participation and, as seen by many, in opposition to NATO. The speech reflected the earlier attempts by Medvedev's predecessor Vladimir Putin to promote Russia's equal role in Euro-Atlantic decision-making.

⁴⁷ The text of the proposed Treaty can be found at <http://eng.kremlin.ru/text/docs/2009/11/223072.shtml>.

evident hesitation (or even opposition) on the side of some European Allies who are keen to avoid points of conflict with Russia.

Therefore, the deficit of a strategic consensus in the region means Ukraine is faced with the threat of long lasting conflict for the vision of the future, where different sets of values and principles, different interests and perspectives compete. The cumulative effect of these realities are debilitating in terms of their effect on Ukraine's domestic policies, and undermine the consolidation of national elites on a platform of sustainable European standards reforms.

4.2. European integration – yes, but..

While Russia increasingly represents an undesirable option, Europe remains an unattainable one. The difficulty of the latter lies in the fact that the adoption of European standards requires a well functioning state, strong coordination (political will and administrative capacity) and willingness to absorb the high up-front costs in order to derive benefits from closer integration with the EU. These preconditions are not met in Ukraine. This is despite the fact that since independence the political elites and society alike have been favourably disposed towards Europe. When President Kuchma in the late 1990s proclaimed European integration as a strategic priority for Ukraine, he did not encounter any opposition from society or mainstream political forces.

Society is generally supportive of integration with the EU. However, public opinion surveys do not really reflect a conscious and informed declaration of support. Public backing for Ukraine's pursuit of membership of the EU has, in practice, been very shallow. No doubt, Europe is largely viewed in positive terms, as a benchmark of development. But there has been hardly any debate about what aspiring to EU membership would actually entail or about potential costs and benefits of such a choice. Precious little attention is paid to the domestic implications of, and preconditions for convergence with the EU. Consequently,

apart from the visa regime, the issue had virtually no resonance in the day-to-day lives of individual Ukrainian citizens. Instead, any references to Europe tend to be couched in broad geopolitical, civilisational or historical terms, captured in such general notions as the 'European choice', 'moving closer to Europe' (*nablyzhennia do Evropy*), or 'building Europe in Ukraine'. This means that relations with Europe can be easily subjected to subtle reinterpretations to reflect shifting preferences and interests of the political and economic elites in Ukraine.

Since the late 1990s, references to 'European integration' found their way into the programmes of most political leaders, parties and blocs. Due to the inherent programmatic weaknesses of Ukrainian parties, none of them managed, or actually sought, to put together a coherent policy programme on European integration or build a lasting legislative majority around integration with the EU. Similarly, during the 2004 presidential campaign, none of the 26 presidential candidates campaigned against seeking closer relations with the European Union. But neither of them presented a clear strategy of enacting the 'European choice', suggesting that it remains an expedient political slogan rather than a priority.

Despite some initial signs of change, the Orange Revolution has not been a breakthrough in that respect. Since the Orange Revolution, the Ukrainian political elites' have been endorsing Ukraine's participation in various EU initiatives and policies, such as the European Neighbourhood Policy (ENP) or Eastern Partnership (EaP). However, these policies have spectacularly failed to focus the minds and lengthen the time horizons of the political class in Ukraine. This is in stark contrast to the way the EU succeeded in engaging the political leaders in East-Central Europe. This is not only due to the inherent vagueness of incentives and objectives of the ENP and EaP but also the domestic circumstances in Ukraine, especially, the political instability which ensued in the aftermath of the Orange Revolution.

Integration with the EU has remained an abstract and distant prospect for many Ukrainian politicians and as such not capable of overriding short-term domestic considerations. Notwithstanding their declared commitments to the 'European choice', the 'Orange' governments failed to adopt a new strategy on European integration. In particular, the elites missed an opportunity to provide a coherent, clear and long-term strategic framework. A corollary of this was the lack of a radical overhaul of the institutional framework of European integration. To all intents and purposes, no effective leadership on European issues has emerged since the Orange Revolution. In the context of the intensive power struggle, any strategies requiring longer-term commitments, including EU-related matters, were relegated to the backburner.

With the mere acquiescence of the political class, the implementation of the main instrument of the ENP over 2005-9, the implementation of the Ukraine-EU Action Plan has been left to the discretion of middle-level bureaucrats, who have responded to the EU-proposed reform agenda most consistently. These emergent enclaves have been seeking to implement reforms under the banner of European integration and to that effect have even tried to exert pressure on the political class to act in line with the reform agenda agreed with the EU. However, without any strong political will or an effective coordinating mechanism, progress has largely been down to the efforts of individuals within key ministries, operating without a clear set of priorities, sequencing of actions, planning, monitoring, or adequate resources.

The implementation has been decentralised and uneven across different sectors, not based on any form of impact assessment, lacking clear benchmarks and criteria of implementation and focused on legal changes rather than implementation processes. On most issues, some progress was made but the momentum not sustained. Often implementation amounted to tokenistic measures by bureaucrats who lack an understanding of, and commitment to, the end goal of the reform process. Most spectacularly, the parliament has not assumed a pivotal

role in facilitating legal approximation. While some action was taken in almost all areas, not a single sectoral success story resulted from the implementation of the 2005-09 Ukraine-EU Action Plan. According to the consortium led by Razumkov Centre, out of 73 priorities of the 2005 AP, 11 were fully implemented, 62 were implemented partially, and one was not implemented at all. As a rule, the more generally defined the priority, the more likely it was reported as completed. With the emphasis on 'action' rather than 'results' in Ukraine, the Action Plan delivered few tangible results.

Five years since its launch, the impact of the ENP has been very modest in Ukraine. It is evident that the policy has not empowered a sufficient number of domestic actors to push through difficult domestic reforms under the banner of *Evrointegratsia*. Rather than representing a fresh and strong push for reforms, the Action Plan merely fed into the ongoing reiterative reform efforts in Ukraine.

It becomes all too apparent as well that the scale and type of domestic adjustments envisaged under the ENP/EaP presents a challenge of a unique sort for the post-Soviet states. In many instances EU reform recommendations on convergence with the EU are designed to address the very problems which hamper this convergence (e.g. political instability, lack of rule of law, weak administrative capacity). Having said that, at least enclaves of expertise on EU-related matters can draw on ready-made, wide-ranging policy prescriptions (formulated in country-specific ENP Action Plans or Association Agenda) in the absence of effective domestic policy making.

Nevertheless, European integration has become increasingly difficult to 'sell' within Ukraine for the pro-European reformers in light of their own disappointment with the EU and domestic obstacles to reforms. Immediately after the Orange Revolution, they have had considerable success in getting the message across about the preconditions of European integration (i.e. domestic reforms rather than geopolitical attractiveness of Ukraine is what matters). But even then they

found it difficult to explain what actual benefits are to be gained for Ukraine, given the uncertain type and scale of award offered by the EU and high upfront costs of domestic reforms. Besides the FTA, the finalité of Ukraine's relations with the EU remains uncertain. Prospects for relations between the EU and ENP states tend to be defined as 'more than cooperation but less than integration' or 'economic integration and political cooperation'. As such they do not lend themselves to easy explanation or understanding beyond the expert community. At the political level, the reformers find it difficult to pressurise domestic actors into implementing reforms, especially as Europe remains a half-hearted choice of the current Ukrainian political elites. And yet mobilisation of powerful domestic actors is required as European integration is a complex and long drawn-out process involving virtually all parts of the state. In practice, it requires comprehensive reform of the state.

Ukraine tried to implement the necessary reforms but failed in the sense that many changes were initiated but not carried through, and therefore did not result in any tangible improvements and benefits. The immediate years after the Orange Revolution were high on pro-EU rhetoric, which by 2009 had cooled down considerably. This was only too evident during the presidential campaign for the 2010 elections, when European integration was hardly an issue for most candidates and the idea of the 'third way' and 'neutral status' for Ukraine once again gained popularity. So the sense of 'Ukraine fatigue' lingering in EU institutions is at least to some extent mirrored by disillusionment with *Evrointegratsia* within Ukraine.

The launch of the special initiative for the EU's eastern neighbours, the Eastern Partnership (EaP), in May 2009 has not changed the dynamics of EU-Ukraine relations. This is, because from the Ukrainian perspective, the EaP implies a degree of retrogression. In essence, Ukraine is grouped together with, rather than differentiated from, post-Soviet states in the South Caucasus, such as Azerbaijan and Armenia, despite their weaker ties with, and ambitions vis-a-vis, the EU. Thus, Ukrainian

officials claim that the EaP adds little to the momentum their country already developed in bilateral relations with the EU.

In that context, it is hardly surprising that much hope is pinned on the new contractual framework, the EU-Ukraine Association Agreement, to bring new impetus to relations. However, for Ukraine the main challenge in its relations with the EU lies in the fact that the process of integration with the EU is continuously hampered by domestic problems.

4.3. The perennial question – what kind of relations with Russia?

One of Ukraine's greatest foreign policy challenges is the nature of the relationship with the Russian Federation. It is even difficult to answer the question of what would constitute an ideal relationship between Ukraine and Russia because different Ukrainian political actors are likely to provide quite varied responses to this question, and secondly, because Russia's current foreign policy stance towards its post-Soviet neighbours in general, and Ukraine in particular, precludes a relationship founded on parity between the two countries.

A review of Ukraine's policy towards Russia since the Orange Revolution reveals two characteristics. First, the desire (particularly on the part of President Yushchenko) to create a relationship based on equality in which agreements would be reached for the mutual benefit of both. This co-existed, however, with a clear priority for advancing Ukraine's relations with the West in general, and NATO and the EU in particular. However, the idea of NATO membership for Ukraine is anathema to large segments of the Russian political and military elite, although its topicality has diminished since the NATO decision in Bucharest in April 2008 not to grant Ukraine a Membership Action Plan (MAP) and the reduced US emphasis on the issue under the Obama administration. Second, despite the formal competence of the Ukrainian president in the

foreign policy sphere, his powers were limited in practice by domestic political squabbles which meant that a) his overall influence decreased and b) difficulties in agreeing on the post of foreign minister resulted in an ineffectual Ukrainian presence on the international arena. Thus on the substantive level Russia declined in importance on the Ukrainian foreign policy agenda, and institutionally the face Ukraine presented to Russia was weak.

These two characteristics interacted with the Russian approach to the post-Soviet space in general and Ukraine in particular to make their post-OR relationship extremely problematic. This approach has consisted of hegemonic behaviour by Russia towards its post-Soviet neighbours, Ukraine included. While Russia has prioritised relations with the neighbouring countries in its foreign policy rhetoric, and has even pledged to make sure their interests are taken into account in international forums, in practice Russia has expected these countries to submit to its influence, and has doled out 'punishment' when encountering resistance. In the context of such an approach it is not surprising that the Russian elite reacted negatively to the Ukrainian policy of assigning priority to relations with the West and expecting to be treated by the Russian side as an equal. In fact, however, Russia has pursued a similar line in some ways, both by attributing great importance to its relations with the USA in particular and by insisting on equal treatment from western states.

The problems in the relationship are clearly visible in the energy sphere. The two 'gas crises' at the beginning of 2006 and 2009 demonstrated that neither Ukraine nor Russia has a developed legal and contractual culture, which would have allowed for settling the disputes in a transparent and fair manner. Rather, many of the actors involved have an interest in the opacity of the transactions. Nonetheless, the agreement on a ten-year contract reached at the beginning of 2009 represents a step forward, due both to the long-term nature of the contract and to the fact that it was signed between Naftohaz and Gazprom

directly, without the participation of a middleman. In addition, the use of formulas to calculate the gas price and the level of transit fees introduces an important element of objectivity into future transactions. Even this success has already been subjected to politically motivated alteration, however. At bilateral talks in Yalta in November 2009, Ukrainian Prime Minister Yulia Tymoshenko and her Russian counterpart, Vladimir Putin, agreed on changes to the contract which would permit Ukraine to import less gas than originally planned without paying a penalty. Shortly thereafter Naftohaz and Gazprom implemented the necessary changes in written form. The impetus for the widely advertised agreement between Tymoshenko and Putin was clearly political. In the context of the Ukrainian presidential campaign Tymoshenko wanted to prove that she is capable of maintaining good relations with Russia, and Putin desired both to indicate that Tymoshenko is an acceptable negotiating partner for Russia and to send a signal to the EU that the Russian side is doing its part to make another Russian-Ukrainian gas conflict unlikely.

Economic transactions are thus embedded in a political context, which go beyond energy questions to include issues of historical interpretation. This is especially visible in the debate on the significance of the 1932-33 famine in the Soviet Union, which resulted from Stalin's collectivisation policy and which hit Ukraine particularly hard. This famine (*holodomor* in Ukrainian) has been characterised by both Yushchenko and the Ukrainian parliament as a genocide committed against the Ukrainian people, and the President has raised awareness of the period by having a monument built to honour those who perished and by overseeing the organisation of a series of commemorative events. The official Russian position denies that Ukrainians were targeted as a nation and points to the fact that members of many ethnic groups suffered as evidence. Quarrels over this and other historical issues have further soured Ukraine's relations with Russia. This incompatibility of historical views both creates a negative background for more prag-

matic aspects of the Ukrainian-Russian relationship, such as the energy issues discussed above, and points to fundamental differences in the slowly emerging identities of Ukraine and Russia as contemporary nations and states.

Finally, the Crimea presents in concentrated form a series of problematic themes for Ukrainian-Russian relations. First and foremost, there is a Russian military presence in the form of the Russian Black Sea Fleet, which is legally stationed in Sevastopol until 2017. Second, there is the fact that the majority of the Crimean population is ethnically Russian, and almost all inhabitants speak Russian as their primary language and are averse to incorporating Ukrainian into their daily lives. Many of them are retired from the Soviet military or other related institutions, implying a conservative position both oriented towards the past and sympathetic to Russia. Third, there are some pro-Russian political forces on the peninsula as well as politicians and businesspeople in Russia who support stronger ties between Russia and the Crimea, including in some cases Russian annexation of the peninsula. The situation in the Crimea, like the Ukrainian emphasis on the *holodomor* and Ukraine's position in the recurring gas conflicts, has been targeted by Russian media in what appears to be a rather systematic campaign to emphasise Ukraine's political and economic weaknesses and to question its viability as an independent and sovereign state.

The low point of Ukraine's relations with Russia in the recent past was reached in August 2009, when Russian President Dmitrii Medvedev sent an open letter to Yushchenko, the content of which was published on the Internet. Medvedev accused his Ukrainian counterpart of being responsible for the sharp deterioration in relations since the OR (which is closely associated in Russian foreign policy thinking with US support for the 'Orange' forces). Medvedev listed many of the issues mentioned above as being particular bones of contention in the relationship between the two countries. While domestic political concerns may have been the primary motivation behind the letter, it can also be viewed

as an attempt to make the Russian agenda vis-a-vis Ukraine clear to all contenders for the presidency.

There have been some more positive signals since the Medvedev epistle, especially in the form of a meeting between the Ukrainian and Russian foreign ministers after the appointment of Petro Poroshenko in October. It is clear, however, from the above sketch of existing problems that the relationship is an extremely difficult one. On the one hand, Russia is not willing to give up its hegemonic approach, but nor is Ukraine in a strong position to demand any such change. Significant parts of the Ukrainian political and economic elite have an interest in working with Russian actors under existing non-transparent conditions. Much of Ukrainian society is against becoming involved in any sort of confrontation with Russia due to personal ties involving that country. Thus, both of the principal candidates in the 2010 presidential election, Tymoshenko and Yanukovich, felt it necessary to demonstrate their ability to cooperate with the Russian leadership. However, in the second round Tymoshenko attempted to distinguish herself as a 'pro-European' and 'democratic' candidate, implying that Yanukovich would pursue a Russia-friendly policy in the extreme and thereby endanger both the sovereignty of the Ukrainian state and the democratic elements of its political system.

5. Prognoses

Viktor Yanukovych was inaugurated as the fourth president of independent Ukraine on February 25, 2010 in Kyiv. His victory was recognised by international observers, and formally welcomed by the international community. The newly appointed EU High Representative for Foreign Affairs and Security Policy (and Vice President of the European Commission) Catherine Ashton and Commissioner for Enlargement and the European Neighbourhood Policy Štefan Füle attended the inauguration ceremony, in a display of attention the EU pays to Ukraine. On March 11, 2010 the new government was formed and Mykola Azarov, one of the leaders of the Party of Regions and Yanukovych's long-standing deputy, was appointed Prime Minister. Although the legitimacy of the procedure of appointing the new government is constitutionally questionable – the so-called 'Reforms and Stability' coalition which proposed the government, was formed of parliamentary factions (the Party of Regions, the Communists, and the Lytvyn Block) and individual MPs, whereas the Constitution does not allow for individual MPs to enter coalitions – the probability is that this government will be stable and work in tandem with the president unlike the incessant inter-executive warfare witnessed during the 'Orange' years.

Viktor Yanukovych's victory and appointment of the new government pose a number of questions, the answers to which will be clear

soon enough. Will the new leadership pursue reforms – economic (to deal with the economic recession) and political or institutional reform (constitutional, judicial, and administrative amongst others)? How will the new leadership work to improve national governance? Which business interests will gain and which will lose under the new regime? Is the threat of erosion of democratic institutions and freedoms real? Will the actions of the new authorities promote national integrity? Finally, what kind of foreign policy will the new President and the Cabinet pursue?

As this report has shown, Ukraine has undergone significant change over the past two decades towards becoming a quasi-western social and political entity. The most probable scenario for Ukraine's future is a continuation of its slow but evident move in the same direction, towards becoming an integral part of the West. This is, however, a long-term perspective. In the short run, poor governance and the fragility of its democratic institutions are an obvious threat to this general trend, making possible the erosion of democratic practices, especially as the newly elected leadership appears to be less committed to democratic norms than the previous one.

The situation is complicated by the fact that both international and domestic circumstances are not conducive to the strengthening of democracy in Ukraine (especially, as compared to 2004-2005). Firstly, the trend across territories of the former Soviet Union is of a reduction in democracy, according to Freedom House reports for the last 3-4 years. Russia is the most obvious case; however, other countries of the region such as Armenia, Azerbaijan, and Belarus have either failed to progress or suffered further deterioration of their democratic institutions. In this context, there can be no guarantees, that Ukraine under its new leadership will be able to preserve its status as a rare example of a 'free state' in the post-Soviet space.

Secondly, negative domestic developments have led to the growing skepticism on the part of society towards democratic principles. There

is a significant swath of society which believes that strong leaders can do much more for the country than laws, rules and debates. As political forces which positioned themselves as 'democratic' were unable to ensure efficient governance, society has become disillusioned with its elites and the 'principles' these elites supposedly adhere to.

Thirdly, the track record of the Party of Regions, its leaders and allies, is at best ambiguous, with questionable attitudes towards democracy and the rule of law. While Yanukovich has clearly learned some lessons from his mistakes of 2004, he still believes that his victory was stolen from him during the Orange revolution.

On the positive side, however, because of the economic recession and large budgetary deficit, Ukraine urgently requires international financial support, which comes with strings attached by the International Monetary Foundation (IMF) and the EU. Additionally, the legitimacy of the current authorities rests on a very narrow margin (3%) between the two front-runners in the presidential race; Yanukovich lacks an absolute majority, elected by only 49% of the vote. It is highly noteworthy that Yanukovich lost in the 17 out of the 27 regions of Ukraine. All of this suggests that Yanukovich will not be able to stabilise his rule without consolidation and consensus building efforts. This fragile legitimacy coupled with civil society's activism, which has developed over the last 5 years, is likely to circumscribe any attempts to limit freedoms and build a kind of 'sovereign democracy' in Ukraine.

For the time being, however, it is not clear whether Yanukovich and his government will focus on concentrating power in his hands or will pursue consensual policies. It is also not clear whether the civil society, the opposition, as discussed below, and international opinion will be able to create lines Yanukovich dare not cross. At the very least, the current situation creates a test case for both the political elites and society. The international environment will also play a role, as the position of its representatives might tip the balance in favour of certain developments in the country.

5.1. Who will govern Ukraine: back to presidential rule?

With the election of the new President and the appointment of the new Government, led by Prime Minister Mykola Azarov, there remains some ambiguity within the Ukrainian political process. On one hand, there is an opportunity to establish a productive relationship between the President, the Cabinet of Ministers and the newly shaped parliamentary majority, which should lead to a more consolidated decision making process, the adoption of necessary legislation and, ultimately, a reduction in the institutional disorder, chaos and scandalous competition between top state officials which so blighted the 'Orange' period.

On the other hand, however, there is an evident risk of misuse of power. Political leaders are already challenging constitutional norms by forming the coalition using dubious procedures. De-facto one-party rule may lead to the concentration of power in the hands of a narrow circle of political elites, which may try to fix its stay in power by undemocratic means. This may lead to the temporary revival of semi-authoritarianism.

So, the major dilemma for Ukraine is this: will Ukraine opt for consolidated governance, based on a constitutionally acceptable 'President – parliamentary majority – Cabinet of Ministers' triad, which should contribute to the consolidation of democratic political institutions and practices or will there be an attempt to monopolise power and limit democratic freedoms, by exploiting the fragility of democratic institutions.

Clearly, the role of the President in the new configuration will be much more significant than that of Yushchenko's presidency (even in the absence of any formal changes to the Constitution), given that Yanukovich, despite not being a particularly strong politician in his own right, currently seems to be able to set the agenda and control all the vital branches of power. There are a number of facts to support this contention. Firstly, the new government, established by the Party of

Regions with a few appointments influenced by the Communists and the Lytvyn bloc, lacks professionals. Out of 29 Cabinet members and 9 vice-prime-ministers only a handful of Cabinet members, among them Kostiantyn Gryshchenko, the foreign minister, have a relevant professional background. Most other members of the Cabinet represent important business interests and are listed among the richest people in Ukraine. Indeed, the Administration of the President (symbolically, the title of the presidential office, called the Secretariat of the President under Yushchenko has been revived from Kuchma's time in power) includes Yanukovych's close allies, such as Anna German and Iryna Aki-mova, the former shadow minister of economy, in top positions. This might well mean that important policy decisions will be taken within the Presidential Administration, while the government will be merely implementing them. Secondly, Yanukovych has been quick in starting to form a strong executive vertical consisting of loyal and trustworthy people at the regional and local levels. The replacement of the regional leaders representing the Party of Regions in Crimea by people from Donetsk is a vivid example. Apparently, this is only the first step with more to follow.

At the same time, Yanukovych's government has already started to pursue policies, which are alienating those niches in society, and regions, which voted for Tymoshenko. Thus, although Yanukovych's first political messages after the election indicated at least a basic understanding of his limited social legitimacy and readiness to look for support in those segments of society, which did not vote for him, his deeds have not followed his words. For instance, Dmytro Tabachnyk, the Minister of education and Volodymyr Semynozhenko, one of the vice-prime-ministers, known for their anti-Western Ukrainian and Rus-sophile sentiments, have already announced that the system for independently and neutrally assessing high school graduates for entry into university introduced by the Orange governments, is to be replaced by the old system, which was notorious for its many opportunities for

corrupt practices. They have also announced measures aimed at de-facto making Russian the official language in several Ukrainian regions, whereas no such measures are proposed for other ethnic minorities in Ukraine who make up a majority of residents in other territories. Not only do these moves fail to reflect an understanding of the need to secure a wider consensus in society, they actually provoke opposition among the societal groups and regions that did not support Yanukovich and are in danger of undermining the strong, vertical presidential structures Yanukovich has started building.

Under these circumstances, a crucial role falls to the new opposition. While Yulia Tymoshenko has already proclaimed herself to be its leader, it consists only of her respective block and the People's Defence party led by former interior minister Yuriy Lutsenko. Other political forces, namely Our Ukraine, in effect Viktor Yushchenko's party, and Arseniy Yatseniuk, who received almost 7% of the vote in the first round of the presidential elections, do not recognise Tymoshenko's leadership. Thus, despite the fact that Yulia Tymoshenko has already formed a shadow government she faces serious challenges as the supposed leader of the opposition. She is likely to be hindered by the lack of support of the 'smaller' partners and the after effects of her ineffective premiership.

As a result, although it covers about 45 per cent of the seats in the parliament combined, the opposition is fragmented, without a recognized leader. Although it controls the regional (oblast) councils in the majority of the regions in Ukraine, with regional and local elections having been postponed for an indefinite period, the opposition lacks a renewed legitimacy and is likely to be undermined by presidential appointees in the executive system of power at the regional and local level.

5.2. Big political business groups – winners and losers

Due to the important role big business plays in Ukrainian politics, there will be winners and losers as a result of the election of the new President and the appointment of the new government. Furthermore, given that pluralism in politics is largely a derivative of the pluralism in big business, as was indicated in preceding sections, it is worth exploring how the new situation is going to affect the pluralism in Ukraine in general.

As Yulia Tymoshenko proved to be a premier who did not kowtow to big business and was keen on renationalisation whenever opportunities presented themselves, almost all Ukrainian big business-political groups supported Viktor Yanukovich in his campaign for the presidency. Some of them did it openly, as constituent parts of the Party of Regions structure such as Rinat Akhmetov-Borys Kolesnikov's group (SCM and others) and Dmytro Firtash-Serhiy Lyovochkin's (Rosukrenergo) group. Some of the others, although formally neutral, were actual supporters of Yanukovich because of their conflict with Tymoshenko (such as Ihor Kolomoysky's 'Privat' group) or because they considered Yanukovich more favourably disposed to big business than Tymoshenko (Viktor Pinchuk's and Oleksandr Yaroslavsky's groups).

Yulia Tymoshenko enjoyed support only from those big business groups represented in her direct entourage, party and faction in the parliament (Kostyantyn Zhevago, Vitaly Haiduk, Taniel Vasadze, Bohdan Gubsky etc). Therefore, the election of Yanukovich is unlikely to lead to extensive changes and reconfigurations on Ukraine's 'oligarchic' arena.

Rinat Akhmetov, the metallurgy magnate from Donetsk, is considered to be the major beneficiary of Yanukovich's victory. He invested in Yanukovich from the very beginning of his political carrier in 1996, when he became the governor of Donetsk. Akhmetov was the main sponsor of the Party of Regions during the uneasy times following the

Orange revolution. Undoubtedly he will benefit from new opportunities and preferences offered by the new government.

However, Akhmetov does not have a monopoly over the Party of Regions and Yanukovych. The 'Firtash group', connected to the gas industry via the Rosukrenergo company (Dmytro Firtash, Yuri Boyko, Serhiy Lyovochkin) got much closer to Yanukovych over the last three years, is deemed to be in competition with Akhmetov for favours. Their major aim is a return to their lucrative intermediary role in Ukraine's gas market, which they lost as the result of the gas deal Tymoshenko reached with Putin in January 2009.

Igor Kolomoysky (Privat group, Dnipropetrovsk) is not a long-term partner of Yanukovych and the Party of Regions. Until 2009 he enjoyed privileged relations with then Prime Minister Tymoshenko and tried to be neutral in politics. However, after Tymoshenko blocked his victory in the privatisation tender of the Odessa Plant (chemical industry) he started an open campaign against her and openly supported Yanukovych. While the president is likely to be favourably predisposed towards him, Kolomoysky will face competition from his long-standing competitor, Akhmetov.

Viktor Pinchuk (Interpipe, Dnipropetrovsk) whose political affiliation in this election was not evident (he backed Yanukovych, but rather passively) is unlikely to obtain favours from the new authority. He will probably preserve his position in the pipe-production industry and will continue his public activities as a promoter of European integration.

Yulia Tymoshenko will most probably lose some of the sponsors of her political force. As big business dislikes being in opposition, a number of her richest supporters may leave Tymoshenko's entourage. Under these circumstances a lot will depend on the business relationship among the business interests behind the current Presidential team and the new government. As we have shown, there is no unity among the business interests behind the new ruling elites. Whether this lack of

unity will be translated into political competition and competing informational spaces will largely define the character of Ukrainian pluralism in general.

5.3. Towards the 'rule of law' or still 'playing with the rules'?

It was clear even before the election that the lack of the rule of law or, generally, the rules of the game is a problem that Ukraine is not going to solve any time soon. As this report has shown, this has much to do with Ukraine's historical legacies, particularly being part of the Soviet Union. So, a 'path-dependency' thesis cannot be ruled out. Yet, this problem has much to do with the quality of the political elites, whose short-sightedness means that they are more interested in preserving the ambiguity offered by the lack of the rules of the game, which they can exploit in a self-serving way. With no foreseeable improvement in the quality of political elites on the horizon, things are unlikely to improve when it comes to the rule of law.

Following the election, all the political actors, particularly the new president's team, have only confirmed that playing with the rules is the most favoured option for the political elites. Firstly, Yulia Tymoshenko has not recognised Yanukovich as the legitimate president. Clearly, the process of voting was not perfect, but it is also true that both sides used whatever resources were available to them to win more votes. In this situation, given that international observers recognised the election as being in line with democratic standards, and all the independent exit-polls largely confirmed the official results, it is difficult to claim that the vote was rigged in favour of one candidate. Not recognising the legitimately elected president does not contribute to a better political culture and certainly does not represent a move towards adhering to the rule of law. It also undermines the new opposition and its supposed

leader. It has yet to be seen whether this opposition is capable of offering a constructive alternative to the actions and policies of the new president and the government, or whether it will seek to continuously undermine the legitimacy of the new leadership. So far, the evidence has suggested that the latter is more likely.

Secondly, the new president's team with members of the parliament from other factions has made some unsavoury moves. The regional and local elections initially supposed to take place in May were cancelled for an indefinite period involving procedural violations and even constitutional violations (the Constitution stipulates that local elections should take place every four years). Moreover, the new parliamentary coalition, which appointed the government, was created in violation of the Constitution (the Constitution allows only parliamentary factions, not individual MPs, to form a coalition; the fact that individual MPs from different factions were brought together into one coalition, only confirms how little the current political elites respects the rule of law).

The reasoning behind the hope that the situation will improve in the medium and long term will be explained below. However, an additional consolation is the experience of Western democracies in which initial accumulation of capital was followed by the establishment of the rules of the game, which were needed to protect the accumulated assets. The heterogeneity of the current coalition and the government coupled with open rivalry among the various economic wings of the coalition, as indicated in the Chapter 5.2., might lead to agreement on rules of the game. Ambiguous rules of the game are indeed beneficial in the short-term, but the experience of the last five years also indicates that depending on circumstances one might be a loser as well as a winner. In this situation, the political elites driven by economic interests, might come to gradually reconsider their approach.

5.4. Freedoms

Ukraine's major problem is not so much in the threats to democracy and civic freedoms, although the risk of their erosion remains, but, rather, in the challenges in achieving a radical improvement in the quality, efficiency, and functionality of the democracy achieved so far. This is a long term and gradual process where the combined efforts of domestic and international forces are needed.

Where political freedoms are concerned, political pluralism and 'feckless' democracy in Ukraine are likely to survive, even though neither the newly elected president, nor the government seem to be strongly committed to securing civic freedoms and strengthening democracy. A number of factors are likely to restrain (though perhaps not nullify) the authoritarian tendencies of the new Ukrainian leaders. First of all, Ukrainian society will reject attempts to curtail its civic freedoms, as demonstrated in opinion surveys and in practice (such as the the Orange revolution). Civil society, although limited in its ability to have an impact on developments is gradually maturing and has the potential to at least create 'no-go areas' for the political elites, which is a good starting point.

Secondly, Ukraine's multiple societal divisions lead to multiple splits within the ruling elite that encourages the emergence of various 'dissidents' in any dominant group. While the Ukrainian oligarchy system is undoubtedly a millstone around the country's neck, its pluralistic nature is an opportunity on which Ukraine can build on.

Thirdly, the international environment and, in particular, the significant links Ukrainian elites have to western resources and institutions discourages them from non-democratic behaviour and the possible severing of those ties. As this report has shown, Ukraine has very little domestic potential for rapid reforms. Yet, there are already grounds on which the EU with other democratic international actors can build. The EU needs to introduce stronger conditionality and display a greater degree of involvement with the domestic reform process in Ukraine, as

well as create more opportunities for diffusion of Western ideas and practices. Following the presidential election the EU has engaged positively. Although the EU has decided to largely ignore the non-constitutional procedure used in the forming of the parliamentary coalition, hoping for political stability and economic reforms, it has nevertheless urged the new President to veto the law on public procurement voted for by the Verkhovna Rada right after the run-off and heavily criticised it for the corruption opportunities it entails. This degree of involvement is desirable and needs to be sustained.

5.5. Prospects for national integrity and consensus

The initial actions taken by Yanukovich do not indicate that he will be successful in raising the level of national consensus in Ukraine. On the one hand, in his rhetoric he has emphasised that he views himself as the president of all Ukraine and aims to pursue policies that will help unite the country and improve its international standing by strengthening the state both economically and politically. However, since Yanukovich is not a particularly strong figure within the Party of Regions and is highly dependent on his financial backers, he is likely to make (or support) decisions, which are in their narrow economic and political interests. This points to a tactical rather than strategic approach – one which does not involve designing a long-term plan for economic and political reform which could unify broad segments of the population across the country and lead to a stronger Ukrainian state.

Furthermore, the way in which the creation of a new parliamentary coalition has been handled, as shown in the Chapter 5.3., suggests that Yanukovich has avoided entering into compromises with political forces with agendas diverging significantly from his own. The coalition, which originally appeared likely, one between the Party of Regions and NUNS, would probably have required certain concessions by the Party of Regions in the realms of language, history and foreign policy. These

concessions could have been the basis for a coalition potentially palatable to large sections of the Ukrainian population, i.e. for a heightened level of national consensus. However, by changing the law on coalition building, Yanukovych and his allies circumvented the need for such concessions. The coalition, which has come into being, leaves out the NU-NS agenda and makes it possible for Yanukovych to pursue a much narrower approach based on exclusion rather than compromise.

These developments have several potential implications. First, it is likely that the eastern regions, where the economic and political interests of most of Yanukovych's financial supporters are concentrated, will benefit disproportionately from the policies to be implemented. This will serve to enhance regional differences and set the western and central regions more firmly against Yanukovych than they currently are, thus reducing his chances of being perceived as president of all Ukraine. Second, Yanukovych's failure to create a broad-based coalition will strengthen the role of the opposition in general and of Yulia Tymoshenko in particular. Her claim that Yanukovych is not a legitimately elected president will feed into the regional issues mentioned above and is likely to increase regional polarisation. The opposition will no doubt attempt to discredit the Yanukovych coalition, which may also result in political polarisation. While a strong opposition can serve as an important check on the government's actions, such opposition can also lead to intense elite battles over resources, during which the interests of society in general are ignored.

5.6. Coping with economic crisis

Overcoming the consequences of the economic crisis will dominate the economic policy agenda of the newly formed government. Fiscal policy, specifically the adoption of the state budget, is a priority in the short-run. The Verkhovna Rada failed to adopt the State Budget Law for 2010 on time, leaving the country without the key fiscal document

of the year. The Prime Minister, Mykola Azarov promised to prepare a draft budget law rather soon and it needs to be seen how this will be implemented. A major challenge faced by the author of the new draft budget is how to balance populist promises made by Viktor Yanukovich in his presidential campaign against the scarce fiscal resources available in the context of the still weak economic revival. Most likely, a lot of campaign promises will be mainly omitted in Budget 2010, due to ruinous public finances inherited from the previous Cabinet. Statements about the latter have been already made preparing society for the slow implementation of increases in social standards voted for by the Parliament in the last quarter of 2009. At the same time, the government is expected to approve higher capital spending owing to its dedication in preparing the country for the European Football Championships in 2012.

A resumption of collaboration with the IMF has already been declared. The adoption of a law on social standards that envisage financially unsustainable increases in social spending and an expansionary 2010 draft budget were among the key reasons for the failure of the third review of Ukraine's USD 16.4 billion Stand-By Arrangement with the Fund, resulting in the non-disbursement of the next tranche.⁴⁸ The IMF representative announced that the mission will resume discussions at the end of March.⁴⁹ A reasonable budget and restrained increases in social spending will definitely be among primary Fund requirements, and the government will have to try to balance them against their declared promises. It is likely that there will be an increase in minimum social payments without adjusting other payments, thus suppressing increases in average social standards and reducing their differentiation.

The other topic for discussion with the IMF will be the financial position of Naftogaz and the restoration of its financial stability. The Government will increase gas prices for the population to improve the

⁴⁸ <http://www.imf.org/external/pubs/ft/survey/so/2009/int110409a.htm>

⁴⁹ <http://www.imf.org/external/np/sec/pr/2010/pr1098.htm>

financial situation of the company, most likely by lifting tariffs disproportionately for large gas consumers.

To finance the fiscal deficit, privatisation will be re-launched. Vice-Prime-Minister Sergiy Tyhipko has already announced that the 2010 privatisation plan is UAH 10 billion.⁵⁰ Three troubled banks de-facto nationalised in 2009 might be sold this year in the attempt to recover public recapitalisation expenditures. Also, energy generating and distribution companies are likely to be sold, as well as the locomotive building company 'Luganskteplovoz' that was returned to the state by the court last year. The level of transparency of any new privatisation deals is likely to be low, based on previous experience involving the new incumbents.

Among longer-term initiatives of the new government, one of the most important is the new Tax Code. The Prime-Minister claimed that the Code could come into force on January 1, 2010.⁵¹ Tax innovations will likely include a property tax, lower tax rates for enterprise profit and value added, and a revised taxation scheme for small business, especially for so called individuals-entrepreneurs. The latter could be a very sensitive issue, as on the one hand, it is a widely used scheme for tax avoidance and, on the other, it has definitely stimulated the development of micro businesses in the country providing self-employment opportunities for people who lost jobs due to the economic transformation. Change in this scheme may lead to strong opposition, but this opposition might be ignored by the current ruling coalition that represents the interests of primarily large business. Yanukovych's promise of tax breaks for small business could be used as a reason for a major revision to the scheme, and its eventual jettisoning.

⁵⁰ <http://news.finance.ua/ru/~1/0/all/2010/03/19/191003>

⁵¹ <http://www.epravda.com.ua/news/4ba34e4e73652/>

5.7. Foreign policy

Ukraine's foreign policy under the new leadership will be less ambitious, but more pragmatic and short-term. The value-based diplomacy of Kyiv is over. This is evident in the decision to extend the lease of Sevastopol as a base of the Black Sea Fleet of the Russian Federation for 25 years in exchange for a reduction in price of energy supplies to Ukraine in April 2010. However, Viktor Yanukovych's natural orientation towards the post-Soviet space may be balanced by his obvious will to be welcomed as a legitimate and respectable leader in the West.

The message announced immediately after the election by the Party of Regions that 'Ukraine with Yanukovych will not ally itself with Russia against the West, and will not ally itself with the West against Russia. Ukraine will be an open country for the whole world' (Borys Kolesnikov, PR deputy chairman), seemingly says it all. Apart from its general lack of sense, the statement is a reflection of 'soft-isolationist' thinking, reminiscent of a traditional Ukrainian saying '*moja khata zkrayu*' ('don't involve me' or 'it's none of my business' – the Ukrainian equivalent is 'I am going to sit on the fence'). It demonstrates that the lack of sense of direction, this report has pointed at, will be further cultivated by the political elites with implications for Ukraine's international standing and public opinion inside the country.

A more positive interpretation of the above is that it represents a revival of the concept of Ukraine as a 'bridge' in the sense of it bridging the West and Russia. However, the term may also represent a play with words and a means of avoiding having to make a choice where Russia's interests clash with those of the West. This approach does not, however, address in a sustainable fashion any of the long-term problems in bilateral relations with Russia, but rather tacitly accepts in the short to medium term at least some elements of the current Russian hegemonic model of interaction. This makes Ukraine a hostage to the policies and interests of other international actors, notably Russia.

Where the EU is concerned, the new leadership of Ukraine will be committed to continuing and finalising the current talks on an Association Agreement with the EU, including the deep and comprehensive free trade area provisions which set regulatory and institutional limits to economic integration with Russia (Russia, Belarus and Kazakhstan are forming a Customs Union; Ukraine is unlikely to join). According to the statements by Yanukovych, closer Ukraine-Russia economic integration is possible, but on the basis of the WTO principles. Taking into account the uncertain prospects of Russia joining the WTO, economic integration with Russia is going to be limited to its current shape.

Where the US is concerned, the new leadership of Ukraine does not have in mind a specific agenda, except for the traditional rhetorical notion of mutually beneficial partnership. Therefore the US Government here has a chance to lead the bilateral agenda, promoting initiatives in the strengthening of democratic institutions, anti-corruption, security cooperation, including technical-military cooperation, exchange of technologies, energy, stronger people-to-people contacts and exchanges.

The US and the EU should cooperate and co-ordinate their approach towards Ukraine, one which is likely to find favour in Kyiv. In the longer run, however, the foreign and security policy of Ukraine will mostly depend on domestic developments, i.e. whether Ukraine opts for the erosion of democracy and freedoms (and moves towards Russia), or for stabilisation and the further development of its democratic institutions and the rule of law (and then, gradual integration with the West). Given that any of these developments are possible, there is a high degree of uncertainty as to how Ukraine develops in the long run.

International Renaissance Foundation (IRF) is the largest Ukrainian charity organisation that promotes civil society development in the country. The IRF is a part of the Open Society Institute (OSI) network founded by American financier and philanthropist George Soros. Its main objective is to provide financial, operational and expert support for open and democratic society development in Ukraine. IRF initiates and supports key civic initiatives, which foster the development of civil society, promote rule of law, independent mass media, democratisation of education and public health, advancing social capital and academic publications and ensuring protection of national minority rights and their integration into Ukrainian society.

IRF's European Program was established in 2004. The goal of the Program is to promote Ukraine's European integration by providing financial and expert support to the relevant civil society initiatives.

The Stefan Batory Foundation is an independent, private Polish foundation, established in 1988 by American financier and philanthropist George Soros and a group of Polish opposition leaders of 1980s. The Foundation's mission is to support the development of an open, democratic society in Poland and other Central and East European countries. In its current activities the Foundation focuses on improving the quality of Polish democracy, enhancing the role of civic institutions in public life as well as developing international cooperation and solidarity. The Foundation engages chiefly in grant distribution to non-governmental organisations as well as runs several in-house programs. Its activities are funded by various institutional and individual donors in Poland and abroad including the Open Society Institute.

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The idea of this publication emerged in the context of the growing mutual disillusionment between the EU and Ukraine in the wake of the 5th anniversary of the Orange Revolution and the 2010 presidential elections. The International Renaissance Foundation and the Stefan Batory Foundation invited a group of international experts to write the report that would present the vision of where Ukraine stands not only five years after the Orange Revolution, but also almost 20 years after its independence. This publication is the result of the collective effort of this team.

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